TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 916.

CHARLES WEST, ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, APPELLANT,

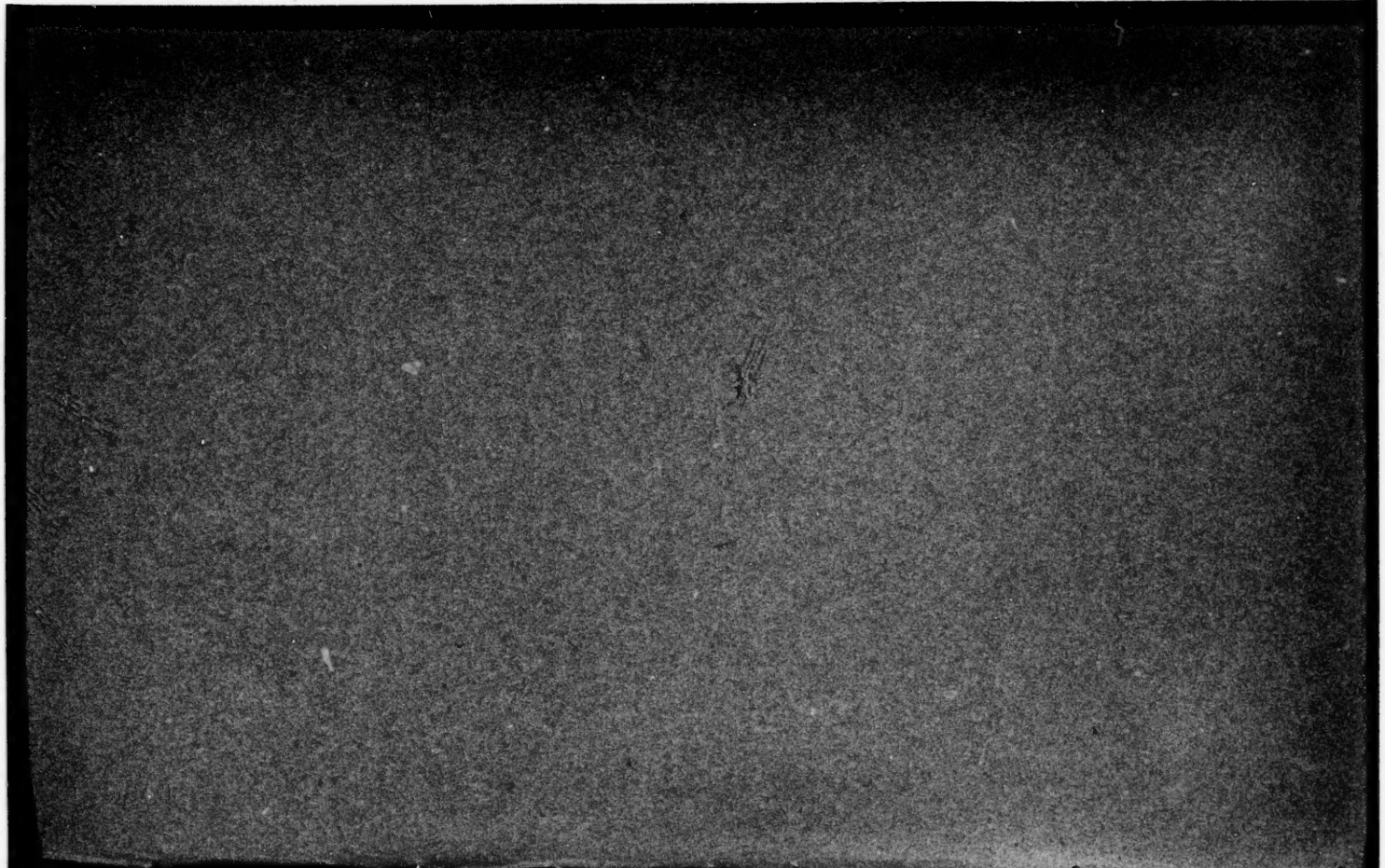
vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

FILED FEBRUARY 21, 1911.

(22,537.)



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1 In the Supreme Court of the United States.

Consolidated Cause No. —.

CHARLES N. HASKELL et al., Appellants,
vs.
KANSAS NATURAL GAS COMPANY, Appellee.

CHARLES N. HASKELL et al., Appellants,
vs.
THE MARNET MINING COMPANY, Appellee.

CHARLES N. HASKELL et al., Appellants,
vs.
A. W. LEWIS, Appellee.

Appeal from the United States Circuit Court within and for the Eastern District of the State of Oklahoma.

Filed —— —, 1911.

The following is a transcript of such of the record and proceedings heretofore had in said cases as has been ordered to be prepared and authenticated as necessary to the hearing in the Supreme Court of the United States.

The Bills of Complaints in these causes were filed in the Office of the Clerk, on the 2nd day of January 1909, and are in words and figures as follows including the Exhibits attached thereto:

2 United States Circuit Court, Eastern District of Oklahoma.

In Equity. 856.

KANSAS NATURAL GAS COMPANY, a Corporation of the State of Delaware and a Citizen of that State, Plaintiff,
v.
CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane, and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, J. J. McAlister and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Oklahoma:

Kansas Natural Gas Company, a corporation of the state of Delaware, and a citizen of that state, brings this, its bill of complaint, against Charles N. Haskell, a citizen of the state of Oklahoma and a

resident of the county of Muskogee therein; and Charles West, a citizen of the state of Oklahoma and a resident of the county of Garfield therein; and John J. Shea, John H. Kane and Frank B. Burford, citizens of the state of Oklahoma and residents of the county of Washington therein; and J. E. Love, J. J. McAllister and A. P. Watson, citizens of the state of Oklahoma and residents respectively of the counties of Woodward, Pittsburg and Pottawatomie therein; and Pete Hanraty, a citizen of the state of Oklahoma and a resident of the county of Pittsburg therein; and thereupon

Your orator complains and says:

First. That it now is and was during all the times hereinafter mentioned a corporation of the state of Delaware and a citizen thereof.

Second. That Charles N. Haskell, one of the respondents, is the duly elected, qualified and acting Governor of the state of Oklahoma and a citizen of that state, and a resident of the county of Muskogee therein; that Charles West, another of the respondents, is the duly elected, qualified and acting Attorney General of the state of Oklahoma and a citizen of that state and a resident of the county of Garfield therein; that John J. Shea, another of the respondents, is the duly appointed, qualified and acting Deputy or Special Attorney General of the state of Oklahoma, and a citizen of that state and a resident of the county of Washington therein; that John H. Kane, another of the respondents, is the duly elected, qualified and acting County Attorney of Washington County, Oklahoma, and a citizen of that state and a resident of the said county of Washington; that Frank B. Burford, another of the respondents, is the duly appointed, qualified and acting Deputy County Attorney of Washington County, Oklahoma, and a citizen of that state and a resident of that county; that J. E. Love, J. J. McAlister and A. P. Watson, others of the respondents, are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma and citizens of that state and residents respectively of the counties of Woodward, Pittsburg and Pottawatomie therein; that Pete Hanraty, another of the respondents, is the duly elected, qualified and acting Mine Inspector of the state of Oklahoma, and a citizen of that state, and a resident of the county of Pittsburg therein.

Third. That in, under and beneath the surface of large tracts of land in the state of Oklahoma, and particularly in the county of Washington therein, natural gas has been discovered, and for more than four years last past has been known to exist in large quantities and of great value for use in the production of light, heat and power, and for all other purposes for which it is adapted or can be used, and during such time has attracted the attention of persons having capital and desirous of investing the same in mining and drilling for, procuring, utilizing and otherwise disposing of such natural gas for the purposes hereinbefore set forth, and that since such discovery of gas as aforesaid and in the counties of Washington, Tulsa, Wagoner, Muskogee, Creek, Nowata, Craig, Mayes, Rogers, and Okmulgee, Oklahoma, and particularly in the said county of Washington, a very large number of natural gas wells have been

drilled and equipped, in the drilling of which, and in the locating and development of the said gas fields, large sums of money aggregating over a million dollars, have been expended, and large numbers of laborers, both skilled and unskilled, have been and now are actively employed.

Fourth. That the work of so drilling for natural gas in the said gas fields of Oklahoma has progressed until there has now been drilled about four hundred gas wells which are capable of producing and furnishing over one billion five hundred million cubic feet of gas per day of twenty-four hours; that such of the said gas wells as are not being used have been capped and shut in and the gas therefrom preserved for sale and consumption; that all cities in and near the said belt in which the said gas is found have been supplied with gas distributing plants and transportation lines have been laid from the said wells in the said field to the said distributing plants and by and through the same all persons in the said cities desiring to use the said gas for light, heat or power, or for any of the purposes for which it may be utilized, are now being fully supplied. Yet your orator charges that notwithstanding the full use of natural gas in the said cities of Oklahoma for whatever consumption the same may be put, and by all who may desire to use it, the total consumption does not and will not exceed more than fifty million cubic feet of gas per day of twenty-four hours, leaving a very large surplus of gas over and above all demands therefor in the said state, and that there is now in the said gas field wells drilled, completed and ready for immediate use, but shut in and not used by reason of the production of gas in the said belt far exceeding the demand therefor, the combined production of which will exceed one billion five hundred million cubic feet per day of twenty-four hours, and that there is in the said county of Washington alone so shut in and not used by reason of the production exceeding the local demand over one hundred and fifty wells capable of producing and delivering seven hundred and fifty million cubic feet per day of twenty-four hours.

Fifth. Your orator further charges and states the fact to be that the cities of St. Joseph, Kansas City, Joplin, Carthage and other cities in the state of Missouri, and the cities of Wichita, Hutchinson, Winfield, Arkansas City, Topeka, Lawrence, Leavenworth, Atchison, Kansas City, Ottawa, Independence, Caney and other cities in the state of Kansas, have in them natural gas distributing plants through which natural gas can be distributed, delivered and sold to persons desiring to use the same for light, heat, fuel, power and other purposes and uses to which the same may be put; that these distributing plants have been built and constructed at great cost and expense; that in many of the said cities, notably St. Joseph, the two Kansas Cities, Wichita, Hutchinson, Winfield, Arkansas City, Topeka, Lawrence, Leavenworth, Atchison and Ottawa there existed for many years manufactured gas generating and distributing plants which, upon the construction of the gas trunk pipe lines about to be referred to, were replaced or supplanted by the said natural gas distributing plants, such of the manufactured gas mains

and pipes as were available and could be used for such purposes being incorporated into and made a part of such natural gas distributing plants; and so much of the generating plants and the manufactured gas mains and lines as were not used in such natural gas plants were either torn up, dismantled, or the use of the same wholly discontinued, so that now no manufactured gas is on sale in the said cities, and the fact is that all of the inhabitants thereof are now wholly dependent upon the use of natural gas for light, heat, fuel, power and the other purposes to which the same can and is being put (except only the limited extent to which steam, electricity and coal is, or can be used); and that the Wichita Natural Gas Company and your orator have, at great cost and expense amounting to many millions of dollars, laid, built and constructed from the said cities to, or near to the state line dividing the states of Kansas and Oklahoma, large trunk pipe lines for the transportation of natural gas to the said cities for distribution, sale and use therein; that the transportation to, and the distribution, sale and use of natural gas in the said cities has been conducted and carried on for several
7 years last past until the inhabitants and consumers thereof in the said cities now rely almost wholly upon the use of natural gas for light, heat, fuel, power and other purposes, and there has grown up and now is in the said cities a great and heavy demand and market for natural gas, which is daily growing larger as the people of the said cities become more accustomed to the use and luxury thereof; that such demand has now grown to such extensive proportions that in many of the said cities, especially the two Kansas Cities, St. Joseph, Topeka, Hutchison and Wichita the local distributing companies supplying the same and securing their gas supply from the said gas trunk pipe lines are unable to meet the increasing demand and there has been and now is a shortage of natural gas therein, and your orator charges that if it be permitted to construct its line hereinafter referred to the gas which it will transport through the same will largely meet and supply such shortage.

Sixth. Your orator avers and charges that it is in the market for and is willing to take and buy large quantities of natural gas for transportation by it to the several cities of Kansas and Missouri along its said trunk pipe line and supplied by it with natural gas and there to be distributed, sold and used.

Seventh. Your orator avers and states the fact to be that by reason of the very large over-production of natural gas in the state of Oklahoma, a production as shown above far exceeding the demand therefor, large quantities of natural gas are for sale in the said state, which can be purchased at a cheap and moderate figure, and by reason of the large demand for and heavy consumption of natural gas in the states of Kansas and Missouri, a pipe line built and laid from the gas fields or belt of Oklahoma to the states of Kansas and Missouri for the carriage and transportation of natural gas would, in the
8 business judgment of your orator, be a profitable investment, and also meet a great public want and perform a great public service.

Eighth. Your orator further avers and declares that the Jefferson

Oil Company, a corporation, is the owner of a natural gas well drilled and situate in the northeast quarter of the northeast quarter of the northeast quarter of Section Sixteen, Township Twenty-nine, Range Thirteen in Washington County, Oklahoma, and did heretofore, to-wit: on and under date of January 9, 1909, at the city of Pittsburgh, Pennsylvania, make and enter into a certain written contract with E. P. Whitcomb for the sale and delivery to him, his heirs, executors, administrators and assigns of all the dry, merchantable gas which can be produced from the said well, the delivery of the same to be at the mouth of the well. The said contract is in writing and a true and correct copy of it is hereto attached, marked "Exhibit A," and made a part hereof as fully as though incorporated at length herein. Your orator further avers and states the fact to be that on and under date of January 15, 1909, at the city of Pittsburgh, Pennsylvania, the said E. P. Whitcomb, for full value received, sold, assigned and transferred to your orator all of his rights in, to and under the said contract "Exhibit A," a true and correct copy of which assignment to your orator is hereto attached, marked "Exhibit B" and made a part hereof as fully as though incorporated at length herein.

Ninth. Your orator avers and charges that William Inge is the owner of the east half of the northeast quarter of said Section Sixteen in Washington County, Oklahoma, and did on and under date of January 23, 1909, at the city of Independence, Kansas, for full value received, sell and grant to E. P. Whitcomb, his heirs, executors, administrators and assigns, a right of way over the same
9 for the purpose of laying, building and maintaining gas pipe lines. A copy of the said right of way is hereto attached marked "Exhibit C" and made a part hereof as fully as though incorporated at length herein.

Tenth. Your orator further says that on and under date of January 25, 1909, the said E. P. Whitcomb, in the city of Pittsburgh, Pennsylvania, did give and grant unto your orator the right or option of purchasing the said right of way at any time within five years thereafter in which your orator might desire to occupy and use the same. Your orator attaches hereto a true and correct copy of the said option, marks the same "Exhibit D" and makes the same a part hereof as fully as though incorporated at length herein.

Eleventh. Your orator therefore avers that it has determined to extend its present gas trunk pipe lines now laid from the cities of Kansas and Missouri to, or near to the line dividing the states of Kansas and Oklahoma, as recited in the fifth paragraph hereof; and now proposes to lay, build and construct the same from the present southern terminus thereof in Montgomery County, Kansas, to and across the line dividing the states of Kansas, and Oklahoma, at a point therein near the northeast corner of said Section Sixteen in Washington County, Oklahoma, and thence southwestwardly to the said gas well in the northeastern quarter of the northeast quarter of the northeast quarter of the said section, and to receive into its said line for transportation to and across the said state line, and for transportation to and sale in the said cities of Kansas and Missouri the

natural gas which it has, under the said contract "Exhibit A" acquired the right to demand, take and receive at the mouth of the well. It is also the purpose and determination of your orator to extend its said trunk pipe line further into the state of Oklahoma and lay branch or gathering lines therefrom as fast as it can acquire rights of way and make contracts for the sale and delivery to it of natural gas from the owners of gas wells therein, the said gas in every instance to be delivered to it at the mouth of the well. Your orator further avers and declares that its said pipe line will be used by it wholly and solely for the transportation and carriage of natural gas from gas wells in the state of Oklahoma into the state of Kansas, and not in any way for local traffic in the state of Oklahoma, and that your orator will conduct and carry on no local traffic in the state of Oklahoma, and that your orator will conduct and carry on no local traffic or business of any nature whatsoever within the state of Oklahoma.

Twelfth. Your orator says further that the total cost and expense of the material, appliances and fittings for its said proposed pipe line, and of excavating the ditch therefor and laying, building and covering the line itself, including the cost of rights of way and damages to the landowners, will aggregate over one hundred thousand dollars.

Thirteenth. Your orator further avers and charges that the transportation of natural gas by means of and through pipe lines is and has been for many years extensively carried on in the Dominion of Canada, the states of New York, Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Missouri, Kansas, Oklahoma, Texas, Arkansas, Louisiana and other states in the United States, and that there are now over five thousand miles of transporting gas lines laid and operated in the said states and Canada, and the transportation of gas by means thereof has grown to and is now a great industry or business, with millions of dollars invested therein, and has become and now is the universal method of transporting natural gas, and, in fact, is now the only known method of carrying and transporting natural gas; that the said lines in Canada and the said states are laid along and across roads, streets highways and other public places without hindrance, damage or danger, and except in very rare cases, and then easily remedied, without even inconvenience to the traveling public, or to the abutting property owners. Your orator further says that natural gas has become and now is a widely known and well established article of interstate commerce and the traffic therein between states has grown to enormous proportions, immense quantities thereof, aggregating each day hundreds of millions of cubic feet, being transported from Canada into New York, from Pennsylvania into New York, and also into Ohio, from West Virginia into Pennsylvania and also into Ohio, from Kansas into Missouri, the cities of Kansas City, Joplin, Carthage and St. Joseph, Missouri, being supplied wholly with gas piped from Kansas, the city of Buffalo, New York, wholly with gas piped from Canada and Pennsylvania, the city of Jamestown, New York, wholly with gas piped from Pennsylvania, the city of Pittsburgh, Pennsylvania, almost entirely with gas piped from

West Virginia, the cities of Cleveland and Toledo, Ohio, almost entirely with gas piped from West Virginia, and pipe lines are now about to be constructed, as your orator is informed and believes, by which gas will be piped from West Virginia to the cities of Baltimore, Maryland, and Washington, D. C.

Fourteenth. That there is now laid, maintained and operated in the state of Oklahoma about five hundred miles of natural gas pipe lines, and daily in use for the transportation and carriage of natural gas both within and out of the state; that the said lines in very many instances, and often at great lengths run over, along and across public highways of the state, and are now maintained and operated for the transportation and carriage of natural gas at great and
12 high pressure therein, and wholly without hurt, hindrance, damage or inconvenience to the traveling public or the abutting property owners, and are so laid, maintained and operated by and with the knowledge and consent of the respondents herein.

Fifteenth. That the line which your orator proposes to construct will not be laid by it along any public highway in the state of Oklahoma, but must necessarily be laid over and across certain highways in the line of its route, but wherever the said line is laid across any public highway, your orator proposes to and will lay the same at such a depth and in such a manner as not in any way to interfere with or endanger or incommode the public travel, and in the same and identical manner as natural gas lines are now laid, maintained and operated over the public highways of the state. It further avers and declares that its said line will be laid of steel pipe tested to a pressure of seven hundred and fifty pounds to the square inch, and will be laid with rubber packer couplings of the latest design, so built and constructed as to absolutely prevent the leakage of gas therefrom; that the pressure which it will maintain upon the said lines for the transportation and carriage of gas through the same will not exceed three hundred pounds to the square inch.

Sixteenth. That, as your orator is advised, informed and believes, each of the defendants herein is, by virtue of his said office and of the Constitution and laws of the State of Oklahoma, clothed with some power and authority, and charged with some duty in the execution and enforcement of the laws of that State and in the protection of public rights, and particularly in respect to the execution and enforcement of the provisions of Chapter 67 of the Session Laws of that State enacted in 1907-1908, hereinafter referred to,
13 and that, as such officers or otherwise, they have assumed and undertaken to execute and enforce said act both by actions and proceedings in the Courts of the State, and by force and arms, as hereinafter set forth.

That it is the avowed purpose and intent of the defendants, and each and every one of them, to prevent the transportation of natural gas produced in Oklahoma beyond the limits of that State, and to that end your orator charges and states the facts to be:

(*a*) That they have caused to be passed by the Legislature of the state of Oklahoma, among other laws and statutes, a certain act, law or statute known and designated as Chapter 67 of the Session

Laws of 1907-1908 of the state of Oklahoma, and entitled: "An Act regulating the laying, constructing and maintaining and operation of gas pipe lines for the transportation of natural gas within the state of Oklahoma, defining the modes of procedure for the exercise of the right of eminent domain for such purposes. Providing for the inspection and supervision of the laying of such pipe lines and limiting the gas pressure therein, and providing penalties for the violation thereof," which provides that the transportation of natural gas shall not be engaged in or carried on by foreign corporations; that no person, individual, association or partnership shall be engaged in the transportation of gas within that state; that the transportation of natural gas shall be conducted and carried on only by corporations created and organized under the laws of that state; that if any corporation created under the laws of the state of Oklahoma shall attempt to transport natural gas beyond the borders thereof, the charter of such corporation shall immediately terminate and be revoked, and a receiver for the Company be appointed and the property of the corporation of every nature and kind be escheated
14 and forfeited to the state. And your orator avers and charges that this act was passed solely and only for the purpose of preventing the transportation of natural gas beyond the borders of the state, and that it is wholly illegal and void because it conflicts with, offends against and is in contravention of Clause 3 of Section 8 of Article I of the Constitution of the United States granting to Congress the power to regulate commerce between the states, in that it is an absolute inhibition upon the exportation of an article of commerce; and of the XIVth Amendment of the Constitution of the United States in that it abridges the privileges and immunities of your orator, a citizen of the United States, and deprives him of his property without due process of law, and denies to him the equal protection of the laws; and of Section 57 of Article V of the Constitution of Oklahoma, in that it embraces more than one subject, no one of which is clearly expressed in its title, and the said act is neither a general appropriation bill, a general revenue bill, nor a bill adopting a code, digest or revision of statutes; and of Section 24 of Article II of the Constitution of Oklahoma, in that it deprives your orator of his private property without just compensation; and of Section 32 of Article II of the Constitution of Oklahoma, in that it creates a monopoly contrary to the genius of free government. Your orator attaches hereto a true, exact and correct copy of the said act, law or statute, marks the same "Exhibit E" and makes the same a part hereof as fully as though incorporated at length herein.

(*b*) That they have, with force and violence, and against the rights of the owners thereof, and in violation of the laws and constitution of the United States, seized a gas pipe line in course of construction across the line dividing the states of Kansas and Oklahoma, and which was to be used wholly and solely for interstate carriage and transportation of gas, and torn the same up
15 and thrown the pipe and material of which it was being constructed back upon the Kansas side of said state line.

(*c*) That, as your orator is informed and believes, they have

caused the line dividing the states of Kansas and Oklahoma to be patrolled on the Oklahoma side thereof with armed guards ordered and instructed by them to resist with force and arms the laying and building of any gas pipe line across the said state line, and to prevent with force and violence the building of any such line, and if necessary to that end to tear up and destroy the same.

(*d*) That they have caused a pipe line constructed before the state of Oklahoma was created and used wholly in the transportation and carriage of natural gas from Oklahoma into Kansas, to be thrown into the hands of a receiver; that this was done by and through an action commenced in the courts of Washington County, Oklahoma, by the filing therein of a petition so cunningly, wickedly and fraudulently drawn as to conceal the fact that the said line was engaged in interstate commerce and wholly beyond the jurisdiction or control of the state of Oklahoma or any of its courts or authorities, a true copy of which petition is hereto attached, marked "Exhibit F" and made a part hereof as fully as though incorporated at length herein; and when the said suit or action was upon the petition of the defendants therein removed into this court the same was, upon the motion of the defendants herein, and at their suggestion that no federal question appeared upon the face of the petition, and against the protests of the defendants therein named, remanded to the said courts of Washington County, Oklahoma; that the defendants herein secured the appointment of the said receiver at Chambers without notice of such proceedings to the owners of said pipe line, the
16 defendants therein, and requiring the said receiver to give bond in the penal sum of only two thousand dollars, when in truth and fact, as your orator is informed and believes, the value of the property of the defendants therein, so passing into the custody and control of the receiver was not less than four hundred thousand dollars; that after the said case was remanded to the said courts of Washington County the defendants, there being threatened by vexations delays and adverse decisions in the said court, and unable to continue the litigation to the Supreme Court of the United States, were forced to and did consent to a decree in the said court, a copy of which is hereto attached, marked "Exhibit G" and made a part hereof as fully as though incorporated at length herein; that as will appear from the said petition the ground upon which the said pipe line was so placed in the hands of such receiver, was that it was a common nuisance, a menace to society, when in truth and fact the pipe line was laid and constructed in the very best of good workmanship and skill, and was maintained and operated in good order and condition and a high state of efficiency, and both where it was laid over, across and along public highways as well as where it ran across public lands, was free from leaks and without menace, danger or inconvenience to the traveling public, or to the owners of the land over which it passed, and that while the line was in possession and control of the said receiver, and at the time of entering the said decree, and ever since, it was operated and maintained in the same order, condition and manner and high efficiency as it was at the

time the said petition was filed charging it with being a common nuisance.

(e) That the defendants have also caused a certain other suit to be instituted in the courts of Osage County, Oklahoma, against (joining also certain of its officers as defendants) The Indian
17 Territory Illuminating Oil Company, a corporation of the state of New Jersey, and lawfully authorized and empowered to engage in the mining for, piping, transporting and marketing of natural gas in the Indian Territory long before Oklahoma became a state, charging the defendants with violating the laws of Oklahoma, and seeking to oust the said corporation from the state of Oklahoma, confiscate its property and restrain and enjoin it from transporting and carrying natural gas, when in truth and fact, as your orator is informed and believes, the real and true object of the said suit is to prevent the piping and carriage of natural gas by the said corporation beyond the borders of the state of Oklahoma. Your orator attaches hereto a true, exact and correct copy of the petition in the said suit and marks the same "Exhibit H" and makes the same a part hereof as fully as though incorporated at length herein.

Seventeenth. That, as your orator is informed and believes, the defendants threaten, and it is their purpose to tear up and destroy by force and violence any gas pipe line transporting and piping natural gas out of and from the state of Oklahoma, including the proposed line of your orator, and to prevent by force and violence and in trespass upon your orator's property and rights the construction and operation of the same; that they also threaten and it is also their purpose to institute by virtue of the said law or statute of Oklahoma suits in the courts of Washington County and elsewhere in Oklahoma against all persons, firms or corporations, including therein your orator, to restrain and prevent the construction and operation of all lines to be used in the transportation and carriage of gas out of and from the state of Oklahoma; that they also threaten, and it is also their purpose to so cunningly prepare and draw the petitions in such proposed suits that they will conceal and not disclose the fact that the pipe lines, the construction of which
18 they threaten to prevent, are engaged wholly and solely in the interstate transportation and carriage of natural gas and so prevent a removal of the same into the federal courts and thus attempt to submit your orator and others so proposing to construct interstate lines, to vexatious delays and adverse decisions in the courts of the state of Oklahoma, and prevent as long as possible any appeal therein to the Supreme Court of the United States.

Eighteenth. That even while the defendants were engaged in the wrongful and unlawful acts and doings hereinbefore mentioned and recited and committed for the purposes of preventing the construction and operation of any gas line used for piping and transporting natural gas out of and from the state of Oklahoma, the defendants were permitting the operation of gas pipe lines from the states of Kansas and Arkansas into the state of Oklahoma, and the citizens of Oklahoma were enjoying the benefits of gas so transported into

Oklahoma from the states of Arkansas and Kansas, notably at or near Arkansas City, Kansas, and Fort Smith, Arkansas.

Nineteenth. That your orator's rights in the premises, and in the operation of the said pipe line are of great value, and that the defendants' wrongful and illegal acts and doings hereinbefore mentioned have caused and are causing your orator great and irreparable pecuniary loss, damage and injury, and that the amount of such direct loss, damage and injury, to your orator is more than two thousand dollars, exclusive of interest and costs, and your orator avers that if such wrongful and illegal acts and deeds of the defendants are continued, will amount to many more thousands of dollars.

Twentieth. Your orator further avers and states the fact to
19 be that the natural gas which your orator proposes to purchase in the state of Oklahoma and transport therefrom through its said pipe line into the states of Kansas and Missouri, is very largely and in fact almost wholly produced and mined from lands owned by Indians, placed by the laws of the United States under the authority, dominion and control of the Secretary of the Interior, and under leases to mine and produce the natural gas therefrom made by such Indians, by and with the approval and consent of the Secretary of the Interior while the Indian Territory still existed and long before the state of Oklahoma was created.

Twenty-first. Your orator further avers and declares that it has never transacted any business, or owned any property situate in the state of Oklahoma, and never maintained an office therein, and never had an officer, agent, employee or representative therein, and that it has never complied with the laws of Oklahoma regulating, governing and controlling foreign corporations doing business within its borders; but charges that such compliance is not required of your orator as all the business which it will ever transact or carry on therein will be the interstate piping, carriage and transportation of natural gas, and no local or other traffic or business will ever be attempted or carried on by it and all the property which it will ever own or have in the state will be such only as is necessary for the conduct of such interstate commerce and business so to be conducted and carried on by it.

Wherefore your orator charges:

1. That such act, law or statute of Oklahoma hereto attached and marked "Exhibit E" as well as all laws of that state so far as it is attempted to apply them to persons, firms or corporations engaged, like your orator wholly and only in the interstate carriage and piping of natural gas are absolutely unconstitutional and utterly null
20 and void and without any force and effect whatever, because by the provisions of the Constitution of the United States hereinbefore referred to, the state of Oklahoma and all its officers and each and every citizen thereof, including the respondents herein, have no power, authority, dominion, control or jurisdiction over persons, firms or corporations engaged, like your orator, wholly and solely in the transportation and carriage of natural gas between states, such persons, firms or corporations so engaged being wholly within the control, regulation, power authority, jurisdiction and protection

of the laws and Constitution and courts and government of the United States of America, and no other.

2. That such act, law or statute of Oklahoma hereto attached and marked "Exhibit E," embracing as it does more than one subject, no one of which is clearly expressed in its title, (being neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes) impinges upon the provisions of the constitution of Oklahoma, as hereinbefore referred to, and is absolutely unconstitutional, and wholly null and void.

3. That any attempts by the defendants to carry out their said threats to tear up and destroy your orator's proposed pipe line, or to annoy and harass it with such threatened suits in the state courts, are gross and repeated trespasses upon your orator's rights and property and will work it great and irreparable loss and injury for which it has no adequate remedy at law.

4. That if the defendants prevent the building of its said line its property in the said right of way so granted to and paid for by it, and its rights in and to the said line itself and the profits therefrom, and the operation thereof will be wholly lost to it and taken
21 from it without due process of law, and your orator abridged of his privileges and immunities as a citizen of this nation, and denied the equal protection of the laws, and deprived of his property without just compensation, and oppressed by a monopoly contrary to the provisions of the Constitutions of the United States and the state of Oklahoma, as hereinbefore referred to.

In consideration whereof, and for as much as your orator can only have adequate relief in this Honorable Court, and to the end that your orator may be saved the trouble, delay and expense incident to separate suits against the said defendants for relief from and against the wrongful and unlawful acts and doings of the defendants hereinbefore complained of, your orator prays this Honorable Court to take cognizance of the several charges set forth in the premises; and

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein prayed for, and may according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all the matters aforesaid and to each of the several interrogatories hereinafter numbered and set forth, but not upon oath, the answer under oath being expressly waived, as by the note hereunder written, they are respectively required to answer, that is to say:

1. Did you not draft the act, law or statute, a copy of which is hereto attached and marked "Exhibit E," before the same was presented to the Legislature of the state of Oklahoma?

2. Did you not draft the said act, law or statute for the express purpose of preventing the construction and operation of gas
22 lines engaged, or to be engaged in the piping or carriage of gas into the states of Kansas and Missouri?

3. If you did not draft the said act, law or statute, did you not

read and approve the same before the same was presented to the Legislature of the state of Oklahoma?

4. Was not the said act, law or statute approved by you and presented to the said Legislature for the express and only purpose on your part of preventing the piping and transporting of gas out of and from the state of Oklahoma?

5. Did you not in or about November, 1907, send a telegram, letter or other communication to John J. Shea, one of the above named respondents, directing him to prevent the laying and construction of gas pipe lines from Oklahoma into Kansas?

6. If you did send the telegram, letter or other communication referred to in the fifth interrogatory, please attach to your answer a copy of such telegrams, letter or communication, if in writing, and if not, state the substance thereof.

7. Did you not in or about November, 1907, receive a telegram, letter or other communication from Charles N. Haskell, one of the above named respondents, directing you to prevent the laying and construction of gas pipe lines from Oklahoma into Kansas?

8. If you did receive the telegram, letter or other communication from Charles N. Haskell, referred to in the seventh interrogatory, please attach to your answer a copy of such telegram, letter or communication, if in writing, and if not, state the substance thereof.

23 9. Did you not in or about November, 1907, tear up with force and violence a gas pipe line laid or being laid across the line dividing the states of Kansas and Oklahoma?

10. If you say you did not yourself tear up such line, please state whether or not you did not order and direct the same to be torn up by others?

11. Was not, in or about November, 1907, a gas pipe line laid or being laid across the line dividing the states of Kansas and Oklahoma torn up and destroyed with force and violence?

12. State, if you know, who tore up the said line and who ordered and directed the same to be torn up.

13. If you answer and say that you did not yourself tear up and destroy the said gas pipe line, state whether or not the tearing up and destruction of the said line was not done with your knowledge, acquiescence and approval.

14. Did you not institute, or cause to be instituted in the district court of Washington County, Oklahoma, a suit in which the state of Oklahoma *ex relatione* John H. Kane, County Attorney of Washington County, Oklahoma, was plaintiff, and the Kansas Natural Gas Company and the Wichita Natural Gas Company and other parties whose names were to the plaintiff unknown, were defendants?

15. Was not the said suit instituted for the purpose of enjoining and preventing the defendants from building and constructing a gas pipe line out of and from the state of Oklahoma into the state of Kansas?

16. Did you not prepare, or attempt to prepare the petition or bill of complaint in the said suit in such a form that no federal question

would appear on the face of the plaintiff's pleadings there-
24 & 25 in?

17. Did you not institute, or cause to be instituted in the District Court of Washington County, Oklahoma, a suit wherein the state of Oklahoma *ex relatione* Charles West, Attorney General, was plaintiff and Charles Owen and T. W. Connelly were defendants?

18. Was not the said suit instituted for the purpose of enjoining and preventing the defendants from operating a gas pipe line then running out of and from the state of Oklahoma into the state of Kansas?

19. Did you not prepare, or attempt to prepare the petition, or bill of complaint, in the said suit in such a form that no federal question would appear on the face of the plaintiff's pleadings therein?

20. Did not the defendants in that suit remove the case to this, the Circuit Court of the United States, in and for the Eastern District of Oklahoma?

21. Did you not appear and move the remanding of the said case to the said District Court of Washington County, Oklahoma, because no federal question appeared upon the face of the pleadings?

22. Was not the case so remanded?

23. After the case was remanded was not a consent decree entered therein, and is not "Exhibit G" hereto attached a correct copy thereof?

24. Was not a receiver appointed in the said case?

25. During the time the said receiver was in charge of the said pipe line, and after such consent decree was entered, was not the pipe line, referred to in the pleadings in the said case, operated in exactly the same manner as it was before the petition therein was filed?

26 26. Did you not institute, or cause to be instituted in the District Court of Osage County, Oklahoma, a suit wherein the state of Oklahoma, ex relatione L. E. Roberts, County Attorney, was the plaintiff, and the Indian Territory Illuminating Oil Company (a corporation) H. V. Foster, John H. Brennan, A. D. McBride, Kenneth K. McLaren, T. N. Barnsdall, Charles W. Willard, James A. Simmons, James S. Glenn, M. I. Duel, A. T. Fancher and Mortimer F. Stilwell were defendants, and was not the said suit instituted for the express purpose, *inter alia*, of preventing the building and construction of gas pipe lines conveying natural gas out of and from the state of Oklahoma into the states of Kansas and Missouri, or either or both of them?

27. Did you not patrol, or cause to be patrolled with guards or patrols, either armed or unarmed, the south side of the state line dividing Kansas and Oklahoma?

28. Did you not instruct or order the said guards or patrols, or cause them to be instructed or ordered, to prevent with force and violence the building or construction of any gas pipe line across the said state line?

29. Was not the said state line so patrolled?

30. Who caused the said line to be so patrolled?

31. What were the instructions given to the said guards or patrols?

32. Was, and is it not your purpose to prevent the building and construction of gas lines running out of Oklahoma, and the piping and transportation of natural gas out of and from the said state?

Wherefore, your orator, needing relief, prays:

First. That the said defendants, and each and every one of them, may be made defendants to this bill of complaint and com-
27 pelled to answer each and every allegation therein contained, but not under oath, the answer under oath being expressly waived.

Second. That it be adjudged and decreed that Chapter 67 of the Session Laws of 1907-1908 of the State of Oklahoma, "Exhibit E," is illegal and void because in conflict with, offending against and in contravention of Clause 3 of Section 8 of Article I of the Constitution of the United States, in that it is an absolute inhibition upon the exportation from the state of Oklahoma of an Article of commerce; and of the XIVth Amendment of the Constitution of the United States in that it abridges the privileges and immunities of your orator, a citizen of the United States and deprives it of its property without due process of law, and denies to it the equal protection of the laws; and of Section 57 of Article V of the Constitution of Oklahoma in that it embraces more than one subject no one of which is clearly expressed in its title, and it is neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes, and of Section 24 of Article II of the Constitution of Oklahoma in that it deprives your orator of its private property without just compensation; and of Section 32 of Article II of the Constitution of Oklahoma in that it creates a monopoly contrary to the genius of free government.

Third. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which would result from the threatened enforcement of the said act, and that such injury would be irreparable.

Fourth. That the said defendants, and each and every of them, may be restrained from committing any of the acts and deeds herein complained of, and from any further violation of your orator's rights in the premises, by a writ of injunction issuing out of
28 and under the seal of this Honorable Court, perpetually enjoining and restraining the said defendants and each and every of them their respective agents, servants, attorneys, workmen and employees, from tearing up, destroying, or in any way interfering with the laying, building and construction of your orator's said pipe line; and from instituting, prosecuting or conducting any suits, and from suing out any writs of process in any of the state courts of Oklahoma against your orator for the purpose of enjoining, restraining or interfering with him in the laying, building, construction, maintenance or operation of his said gas pipe line, either under the authority of the said act, law or statute, "Exhibit E," or any other act, law or statute of the state of Oklahoma, or under any pretended

common law, right, rule of action or unwritten law of the state of Oklahoma.

Fifth. That a provisional or preliminary injunction be issued forthwith, restraining the said defendants and each and every of them, their respective agents, servants, attorneys, workmen and employees, from committing any of the acts and doings herein complained of by your orator, and from tearing up, destroying, or in any way interfering with the laying, building and construction of your orator's said pipe line; and from instituting, prosecuting or conducting any suits and suing out any writs of process in any of the state courts of Oklahoma against your orator for the purpose of enjoining, restraining or interfering with it in the laying, building, construction, maintenance or operation of its said gas pipe line, either under the authority of the said law or statute, "Exhibit E," or any other law or statute of the state of Oklahoma, or under any pretended common law, right, rule or action or unwritten law of the state of Oklahoma.

Sixth. That the said defendants be decreed to pay the costs of this suit.

29 Seventh. That this Honorable Court grant your orator such other and further relief as the equity of the case may require and to your Honors may seem meet.

Eighth. And may it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said defendants, and each and every of them, commanding them, and each and every of them, on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order, direction and decree as to your Honors may seem meet and proper, and as required by the principles of law, equity and good conscience.

And your orator will ever pray.

KANSAS NATURAL GAS COMPANY,

By ——— ———, *Its President.*

Attest:

——— ———

Its Secretary.

——— ———

——— ———

Solicitors for the Complainant.

NOTE.—The respondent, Charles N. Haskell, is required to answer all of the above special interrogatories, numbered respectively 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

The respondent, John J. Shea, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

30 The respondent, John H. Kane, is required to answer all of the above special interrogatories numbered respectively 1, 2,

3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31 and 32.

The respondent, Frank B. Burford, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31 and 32.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Be it remembered that on this — day of January in the year of our Lord one thousand nine hundred and nine before me, a Notary Public in and for said county and state, personally appeared ——— ———, who being by me first duly sworn according to law says that he is the ——— ——— of the above named complainant, Kansas Natural Gas Company, and that he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the statements made therein are true of his own knowledge and belief — as to the matters therein stated on information and belief, and as to those matters stated on information and belief, *and as to those matters* he believes them to be true.

——— ———.

Subscribed and sworn to before me the day and year last above written. In witness whereof I have hereunto set my hand and affixed my notarial seal.

My commission expires —.

———,
Notary Public.

31 EXHIBIT A.

Articles of Agreement, Made and entered into this Ninth day of January, in the year of our Lord, one thousand nine hundred and nine, at the City of Pittsburgh, Pennsylvania, by and between Jefferson Oil Company, a corporation, and E. P. Whitcomb, of Pittsburgh, Pennsylvania.

Whereas, the Oil Company is the owner of a gas well drilled in the North Quarter of the Northeast Quarter of the Northeast Quarter Section Sixteen, Township Twenty-nine, Range Thirteen, in Washington County, Oklahoma, and desires to market the gas therefrom;

Now These Articles Witnesseth, That the parties hereto, for and in consideration of the sum of One Dollar, lawful money of the United States of America, unto each of them by the other paid, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, as well as of their mutual covenants hereinafter contained, on the part of each to be kept and performed, have covenanted promised and agreed, and by these presents do covenant, promise and agree, with each other, as follows:

First. The Oil Company agrees to sell and deliver to the said Whitcomb, at the mouth of the well, all the gas produced therefrom,

for the price or sum of one and three-fourths cents for each thousand feet of gas taken. The said Whitcomb shall set and install at the mouth of the said well, a proportional gas meter, through which he shall receive all the gas which he shall take hereunder. The Oil Company shall provide the necessary drips, so that all the gas to be delivered hereunder shall be dry, merchantable gas, free from water, oil or other fluid. All gas delivered through the said meter shall be computed at a two pound pressure, the multiple usual in the gas business being applied to each month's reading of the meter, so that the same shall be computed on the two pound basis.

32 Second. The said Whitcomb agrees that he will pay to the said Oil Company, at its principal office, wherever the same may be located, the sum of one and three-fourths cents for each thousand cubic feet of dry, merchantable gas taken by him from the said well. He shall pay for all gas delivered each month on or before the twentieth day of the succeeding month. All gas delivered hereunder shall be against the line pressure of the gas in the line receiving the gas from the said well at the mouth thereof.

Third. The said meter shall be read by the said Whitcomb, or his representatives, as near as possible to the last day of each month, in the presence of a representative of the Oil Company, if it desires to be present. Each successive reading of the said meter shall be conclusive upon both of the parties hereto, unless objections in writing, stating the reasons thereof, are served upon the other party within ten days after such reading is made.

Fourth. If the said meter should at any time fall out of repair or fail to register, then the reading of the said meter, or a meter replacing it, for a like period of time, either preceding or following that in which the meter is out of repair or fails to register, taking into consideration weather conditions and the pressure on the line, shall be the basis upon which the parties hereto shall settle.

Fifth. If the Oil Company shall at any time believe the said meter to register incorrectly the amount of gas passing through it, it shall have the right to demand that the same be tested, and if upon such test such meter shall be found to register correctly or fast, the expense of such test shall be borne by the company; but if such test shall show that the said meter registers slow, then the said Whitcomb shall replace the said meter with one registering correctly the amount of gas passing through it. A meter which shall register between two per cent. fast and two per cent. slow shall be treated as registering

33 correctly for the purposes of this contract and this paragraph.

The said Whitcomb shall also at any time have the right to replace the said meter with another registering correctly the amount of gas passing through it. The terms and conditions of this paragraph shall apply not only to the first meter installed, but to any and all meters replacing it.

Sixth. This contract shall run for three years from its date, and thereafter, until one of the parties hereto shall give thirty days' written notice of his or its desire to end it.

Seventh. This contract executed in duplicate.

Eighth. This contract shall bind and run in favor of the parties

hereto, their respective heirs, executors, administrators, successors or assigns.

In Witness Whereof, The said Oil Company has caused its corporate name to be hereunto subscribed by its Vice President, and its common and corporate seal to be hereunto affixed and the same attested by its Secretary, and the said Whitcomb has hereunto set his hand and affixed his seal, the day and year first above written.

JEFFERSON OIL COMPANY,
By J. W. McKEE,
Its Vice President.

[L. S.]

Attest:
HOMER NEEDLES,
Its Secretary.

E. P. WHITCOMB. [SEAL.]

34 EXHIBIT B.

Know All Men By These Presents, That I, E. P. Whitcomb, of Pitsburgh, Pennsylvania, for and in consideration of ten dollars, lawful money of the United States of America unto me well and truly paid by the Kansas Natural Gas Company, a corporation, at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said Kansas Natural Gas Company, its successors and assigns, all my right, title and interest in, to and under a certain contract, dated January 9, 1909, and made between the Jefferson Oil Company and myself, granting and giving to me the right to take and receive the output of a certain gas well owned by the Oil Company in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section Sixteen, Township Twenty-nine, Range Thirteen, in Washington County, Oklahoma; subject to all the terms and conditions of the said contract which the said Gas Company, by its acceptance hereof, assumes and agrees to keep and perform.

To Have and To Hold unto the said Kansas Natural Gas Company, its successors and assigns forever.

In Witness Whereof, I have hereunto set my hand and seal, this Fifteenth day of January, in the year of our Lord, one thousand nine hundred and nine.

E. P. WHITCOMB [SEAL.]

35 EXHIBIT C.

For And In Consideration of the sum of One Dollar to us in hand paid, receipt of which is hereby acknowledged, and the further consideration of Twenty-five (25) Cents per rod to be paid when such grant shall be used or occupied, we William Inge and Lucy J. Inge, his wife, do hereby grant to E. P. Whitcomb, successors or assigns, the right of way to lay, maintain, alter, repair, operate and remove

pipe lines for the transportation of oil or gas, and erect, maintain and operate telegraph or telephone lines, if the same shall be found necessary on, over and through certain lands, situate in Washington County, State of Oklahoma, described as follows:

Lot One (1) and the Southeast Quarter of Northeast Quarter of Section Sixteen (16), Township Twenty-nine (29), Range Thirteen (13) East, containing Seventy-three and Thirty-six Hundredths (73.36) acres, more or less, with ingress and egress to and from the same. The said grantors their heirs or assigns, to fully use and enjoy the said premises, except for the purposes hereinbefore granted to the said grantee who hereby agrees to pay any damages which may arise to crops and fences from the laying, maintaining and operating said lines, said damage if not mutually agreed upon, to be ascertained by three disinterested persons, one thereof to be appointed by the said grantors, heirs or assigns; one by said grantee, successors or assigns; and the third by the two so appointed as aforesaid, and the award of three such persons shall be final and conclusive.

In Witness Whereof, the parties hereto have set their hands and seals this 23rd day of January, A. D. 1909.

WILLIAM INGE. [SEAL.]
LUCY J. INGE. [SEAL.]

Signed, sealed and delivered in the presence of

____ ____.
____ ____.

36 STATE OF KANSAS,
County of Montgomery, ss:

Before me, the undersigned, a Notary Public in and for said county and state, on this 23rd day of January, A. D. 1909, personally appeared William Inge and Lucy J. Inge, his wife, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

[L. S.] ERNEST SEWELL,
Notary Public.

My commission expires April 5th, 1911.

EXHIBIT D.

Know All Men by These Presents that I, E. P. Whitcomb, of Pittsburgh, Pennsylvania, for and in consideration of ten dollars lawful money of the United States of America unto me well and truly paid by the Kansas Natural Gas Company, a corporation, have granted, sold and given unto the said Kansas Natural Gas Company, its successors and assigns, the right or option to take and acquire all my right, title and interest in, to and under that

certain contract and right of way hereto attached and made to me by William Inge under date of January 23, 1909, and granting to me the right of way to lay, maintain, alter, repair, operate and remove pipe lines for the transportation of oil or gas, and to erect, maintain and operate telegraph or telephone lines if the same shall be found necessary, on, over and through certain lands in Washington County, Oklahoma, and being Lot One and the southeast quarter of the northeast quarter of Section Sixteen, Township Twenty-nine,
37 Range Thirteen east, and containing seventy-three and thirty-six one-hundredths acres, more or less.

To Have and to Hold unto the said Kansas Natural Gas Company, its successors and assigns, forever.

This contract made, executed and delivered in the city of Pittsburgh, Pennsylvania.

In Witness Whereof I, E. P. Whitcomb, have hereunto set my hand and affixed my seal this twenty-fifth day of January in the year of our Lord one thousand nine hundred and nine.

—— ——. [SEAL.]

STATE OF PENNSYLVANIA.
County of Allegheny, ss:

Be It Remembered that on this twenty-fifth day of January in the year of our Lord one thousand nine hundred and nine, before me a Notary Public in and for the said county and state, personally appeared the above named E. P. Whitcomb, personally known to me and known to me to be the same and identical person described in and who executed the foregoing instrument, and in due form of law acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth, to the end that the same might be recorded as such.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public.

My commission expires —.

38 EXHIBIT E.

Chapter 67.

Pipe Lines.

Regulating Gas and Oil Pipe Lines.

Article I.

An act regulating the laying, constructing, and maintaining and operating of gas pipe lines for the transportation of natural gas within the state of Oklahoma, defining the modes of procedure for the exercise of the right of eminent domain for such purposes, providing for the inspection and supervision of the laying of such pipe lines and limiting the gas pressure therein, and providing penalties for the violation thereof.

Be It Enacted by the People of the State of Oklahoma:

SECTION 1. Any firm, co-partnership, association or combination of individuals may become a body corporate under the laws of this state for the purpose of producing, transmitting or transporting natural gas to points within this state by complying with the general corporation laws of the state of Oklahoma, and with this Act.

SEC. 2. No corporation organized for the purpose of, or engaged in the transportation or transmission of natural gas within this state shall be granted a charter or right of eminent domain, or right to use the highways of this state unless it shall be expressly stipulated in such charter that it shall only transport or transmit natural gas through its pipe lines to points within this state; that it shall not connect with, transport to, or deliver natural gas to individuals, associations, co-partnerships, companies or corporations engaged in transporting or furnishing natural gas to points, places or persons outside of this state.

39 SEC. 3. Foreign corporations formed for the purpose of, or engaged in the business of transporting or transmitting natural gas by means of pipe lines, shall never be licensed or permitted to conduct such business within this state.

SEC. 4. No association, combination, co-partnership or corporation shall have or exercise the right or eminent domain within this state for the purpose of constructing, or maintaining a gas pipe line or lines within this state, or shall be permitted to take private or public property for their use within this state, unless expressly granted such power in accordance with this Act.

SEC. 5. The laying, constructing, building and maintaining a gas pipe line or lines for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets, or alleys in this state, or of any county, city, municipal corporation or any other public or private premises within this state is hereby declared an additional burden upon said high-

way, bridge, road, street or alley, and any other private, or public premises may only be done when the right is granted by express charter from the state and shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law.

SEC. 6. All pipe lines for the transportation or transmission of natural gas in this state shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mining inspector for such duty, and the expenses of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.

SEC. 7. No pipe line for the transportation or transmission of natural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of testing such lines, and gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas or used on or in any gas well within this state.

SEC. 8. Any corporation granted the right under the provisions of this Act to exercise the right of eminent domain, or use the highways of this state to construct or maintain a gas pipe line or lines for the transportation or transmission of natural gas to points within this state, which shall transport or transmit any natural gas to a point outside of, or beyond this state, or shall connect with or attempt to connect with or threaten to connect with any gas pipe line furnishing, transporting, or transmitting gas to a point outside of, or beyond this state, shall by each or all of said acts, forfeit all right granted it or them by the charter from this state, and said forfeiture shall extend back to the time of the commission of said act or said acts in violation of this Act; and such act or acts shall of themselves work a forfeiture of any and all rights of any and every kind and character which may be or may have been granted by the state for the transportation or transmission of natural gas within this state, and all the property of said corporation and all the property at any time belonging to said corporation, at any time used in the construction, maintaining or operation of said gas pipe line or lines shall, in due course of law, be forfeited to and be taken into the possession of the state through its proper officer and in said action there shall be a right to the state of the appointment of a receiver, either before or after the judgment, to be exercised at the option of the state, and the officer taking possession of said property shall immediately disconnect said pipe line or lines at a proper point in this state from any pipe line or lines going out of, or beyond the state. And said property shall be sold as directed by the court having jurisdiction of said proceedings, and the proceeds of said sale shall be applied, first to the payment of the cost of such proceeding, and the remainder, of any, paid into the school fund of the state, and said charter under which said act or acts were committed shall be revoked, and no charter for the transportation or transmission of natural gas shall ever be granted to any corporation having among its stockholders any person who was one of the stock-

holders of said corporation whose charter has or may have been forfeited as aforesaid, and if any such charter shall have been granted, and thereafter a person shall become a stockholder thereof who was one of the stockholders of the corporation whose charter has been or may have been forfeited, as herein provided, the charter of said corporation, one of whose stockholders is as last named, shall therefore be forfeited and revoked. Provided, that any person who may be denied the right to become a stockholder as above prescribed may be granted the right to become such stockholder by the corporation commission, when such person shows to such commission that he was not a party to the former violation of this Act.

SEC. 9. No pipe lines for the transportation or transmission of natural gas shall be laid upon private or public property when the purpose of such line is to transport or transmit gas for sale to the public until the same is properly inspected as provided in this Act; and before any gas pipe line company shall furnish or sell gas to the public, it shall secure from the inspector a certificate showing that said line is laid and constructed in accordance with this Act, and under the inspection of the proper officer, provided, that nothing in this Act shall be construed to prevent persons drilling for oil and gas from laying surface lines to transport or transmit gas to wells which are being drilled within this state and further provided, that factories in this state may transport or transmit gas through pipe lines for their own use for factories located wholly within this state, upon securing the right of way from the state over or along the highways and from property owners to their lands.

42 SEC. 10. That no person, firm or association or corporation shall ever be permitted to transit or transport natural gas by pipe lines in this state or in this state construct or operate a pipe line for the transmission of natural gas, except such persons, firms, associations, or corporations be incorporated as in this Act provided, except as in section 9 of this Act, and provided further that all persons, firms, corporations, associations, and institutions now doing the business of transporting or transmission of natural gas in this state and otherwise complying with this Act are hereby permitted to incorporate under the provisions of this Act within ten days after the passage and approval of the same.

SEC. 11. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 12. An existing emergency is hereby declared by the legislature for the preservation of the public peace, health and safety of the state.

SEC 13. This act shall take effect from and after its passage and approval as provided by law.

Approved December 21, 1907.

43 EXHIBIT F.

In the District Court of the State of Oklahoma in and for Washington County.

In Equity.

THE STATE OF OKLAHOMA on the Information and Relation of CHAS. WEST, Attorney General, Plaintiff,

vs.

CHAS. OWEN and — CONLEY, Whose Christian Names are Unknown, Defendants.

Petition.

In the District Court of the State of Oklahoma in and for Washington County.

Comes now Charles West, the Attorney General of the State of Oklahoma, and inform- the Court, and give- the Court to know that in the County of Washington, in this State, defendants, Chas. Owen and — Conley, whose christian names are unknown, are constructing and operating a pipe line transmitting natural gas between two or more points in this State, and as such are connecting at the State line with other like lines, without authority of law so to do.

That plaintiff does not know whether the defendants are committing said acts under the guise of the character of a corporation or as a co-partnership, or as individuals, but that if said acts are being committed under color of a charter of a corporation said corporation has not accepted completely all the provisions of the Constitution applicable to transmission Companies and other public service corporations.

That said defendants are, without authority so to do, entering upon and laying gas pipes in, through and over highways of the State and private property, without being entitled to the benefit of the right of eminent domain in this State, and without
44 having become a body corporate, pursuant to, and in accordance with the laws of this State.

That said defendants, in so doing, are keeping and maintaining a common nuisance in that they are thereby annoying, injuring and endangering the comfort, repose, health and safety of the people of this State, by attempting to exercise the right of eminent domain without any authority, therefor, and by unlawfully interfering with, obstructing and tending to obstruct, and rendering dangerous for passage the highways of the State over, through and across which gas pipe line is being constructed and operated and rendering other persons, to-wit: the owners of the land over which said gas pipe line is constructed and operated insecure in the use of their property by using the same for the transmission of natural gas from points to points in this State without authority so to do;

and are rendering other persons, to-wit: the citizens of this State and owners of land therein insecure in their property, to-wit: natural gas, by piping natural gas through said pipe out of this State into the State of Kansas, and thereby withdrawing from the resources of this State valuable property, without authority so to do. That defendants are thus acting as if under a franchise or right without any authority so to do, and threaten to continue their said unlawful acts, and to increase the same by constructing and operating their said unlawful business in a southwardly direction, over, through and across the lands of other persons and other highways of the State.

That plaintiff is without any adequate remedy according to the Courts of the common law and is suffering irremediable injury in that there is no way to substitute and replace the natural gas thus transmitted away from the land of private persons and from this State into the State of Kansas. That under the surface of the earth there are connections between some and many of the deposits of natural gas, so that in piping the gas from one gas well tends to exhaust the supply of natural gas under the lands of other persons at a great distance therefrom.

Wherefore, the plaintiff prays that this Court grant an order restraining, and enjoining defendant, and all their agents and servants, abettors, comforters, assistants and accessories from in any way constructing or operating any natural gas pipe line in this State, or laying or constructin- the same in, through or over the lands of any persons in this State, or any of the highways in this State, and that a Receiver be appointed to take possession of all of said property of defendant so used in constructing and operating said natural gas pipe line in this State to preserve the supply of natural gas for the citizens of this State from further waste, and for such other relief as the equity of the case may warrant, and for the costs of this action.

STATE OF OKLAHOMA,
By CHAS. WEST, *Attorney General,*
and
JOHN J. SHEA,
Assistant Attorney General.
SIDELL & SHIPMAN.

STATE OF OKLAHOMA,
County of Washington, ss:

John J. Shea, being first duly sworn, states that he is one of the Attorneys of the relator in the above entitled cause; that he has read the foregoing petition and is informed from persons likely to know the truth of the same and verily believes the above statements to be true to the best of his information and belief.

JOHN J. SHEA.

Subscribed and sworn to before me, this 13th day of December.

[SEAL.] JOHN B. CHURCHILL,
Clerk Dist. Court.

46 EXHIBIT G.

STATE OF OKLAHOMA,
County of Washington, ss:

In the District Court.

STATE OF OKLAHOMA ex Rel. CHAS. WEST, Attorney General,
Plaintiff,
vs.
CHARLES OWEN et al., Defendants.

Stipulation.

It is agreed by and between the state of Oklahoma and Chas. Owen, et al., that the decree attached hereto may be signed by Hon. T. L. Brown, Judge of the Second Judicial District at Vinita, and may be entered at Bartlesville, with the same force and effect as if the same were signed and entered in open court at Bartlesville.

It is also further agreed that the receiver herein, Jay H. Mullen, may make report of his doings to the Hon. T. L. Brown, Judge, who may examine, act upon, and approve said report in Chambers, directing the clerk at Bartlesville to enter the same of record there, all of which shall have the same force and effect as if it were done in open court.

Dated this 8th day of April, 1908.

(Signed) STATE OF OKLAHOMA,
By JOHN J. SHEA,
Special Attorney General.
CHARLES OWEN and
OWEN & CONNELLY.

47 In the District Court.

STATE OF OKLAHOMA
County of Washington, ss:

STATE OF OKLAHOMA ex Rel. CHAS. WEST, Attorney General,
Plaintiff,
vs.
CHARLES OWEN et al., Defendants.

Precedent for Decree.

Now on this 8th day of April, 1908, the same being one of the days of the regular —, 1908, term of this court, this cause came on to be heard upon the pleadings and evidence taken herein, and a stipulation and agreement which is in words and figures as follows:

In settlement of the controversy pending between the state of

Oklahoma on the information of the Attorney General vs. Charles Owen, it is stipulated that all of the pipe lines, the subject matter in the controversy in the hands of the receiver, is the private property of Charles Owen; that G. W. Connelly owns a well that is attached to said line but has no ownership in any part of the line from the point where the line going from Connelly's well goes into the main trunk line of the defendant, Charles Owen.

That Charles Owen makes the statement, that upon the truth of the same in all respects, the following settlement and arrangements are made;

That in the estate of Kansas he serves gas to Cheyenne Window Glass Co., Caney, Kansas, Baker Bros. Glass Co., Caney, Kansas, Caney Glass Co., Caney, Kansas, to the residence of Chas. Owen, Caney, Kansas, Jno. Foot, Caney, Kansas, Wm. Williams, W. W. Barr, for domestic use to Connelly Flats, Caney, Kansas, the
18 residence of J. D. Canary, and to the Independence Gas Company of Caney, Kansas, which is furnishing gas to a green house and several dwelling houses; and thereby states that he does not furnish gas to any one except in, and not outside of, the incorporate limits of the town of Caney, Kansas, and Caney Township, and does not furnish gas to any Gas Company or any transmitter of gas except the said Independence Gas Company.

And it is thereupon agreed that so far as the authorities of the State of Oklahoma have authority therein that the statu quo now existing as stated above shall be maintained, it being expressly understood that the Independence Gas Company shall not increase its consumption from the pipe of Chas. Owen or any pipes leading from said four excepted sections, and that no gas shall ever be furnished to any other furnisher or transmitter of gas anywhere, but that the consumption of the private persons and businesses above named may be increased at any time to any amount that they themselves can use in the way they are now using it, but the kind of use shall not be changed.

The said Chas. Owen hereby undertakes to incorporate a gas transmission company in the state of Oklahoma in all respects according to law, and to transfer to it all of his leases and rights for the transmission of gas or laying of gas pipes, subject to the approval of the Secretary of the Interior, except that from on four sections of land, section fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), Township Twenty-nine (29), Range Thirteen (13) in the county of Washington, Oklahoma, and all the lines in these four sections are to be entirely disconnected if now connected, and if not now connected are never to be connected with any of the lines to be transferred to said Oklahoma corporation; and upon the performance of these undertakings the suit now pending is to be settled by a judgment in favor of the state of Oklahoma, making the
19 injunction perpetual, except as to the transmission of gas from four sections into the places and business of persons named above through the line already in existence owned by said Chas. Owen, and that as to it the pending contracts are to be carried to completion but no new contracts are to be made without

further agreement between the signing parties for the supply of gas except in the state of Oklahoma. And in case the state of Oklahoma shall not agree to any further contracts that none shall be made at all.

The intent of the foregoing agreement is that said Chas. Owen shall in all respects comply with the law of Oklahoma as to the transmission of natural gas and place himself in a position so to do within a reasonable time, and that in view of the fact that there is a contention between the signing parties as to whether contracts made by him to furnish gas in Kansas prior to statehood may be carried to completion or not, that he shall be allowed to carry the same to completion if drawn from the four sections above named.

Said Chas. Owen shall be given the right to drill as many wells as he may deem proper within said four sections, and for it to furnish gas anywhere in Oklahoma through his said corporation to be incorporated in Oklahoma, but that the lines of said corporation shall never be connected with lines transmitting gas into the state of Kansas. Said corporation shall be formed within thirty days from this time and application to the Secretary of the Interior to transfer his leases within ten days after said incorporation and he shall have sixty days from this time for the performance of any physical connection or disconnection herein made necessary.

CHAS. WEST,
Attorney General.
CHAS. OWEN.

And said stipulation and agreement is by the Court in all things approved, ratified and confirmed.

And the court being fully advised in the premises doth find
50 the issues in favor of the plaintiff, and doth further find that the temporary injunction and restraining order heretofore granted herein should be made perpetual, except in respect of the gas produced upon sections fifteen, twenty-two, twenty-seven, and thirty-four of Township twenty-nine (29) north, Range thirteen (13) east, in Washington County, state of Oklahoma, and the pipe line used at the present time to convey said gas from said sections to the town of Caney, in the state of Kansas; and that the receivership herein be dismissed and the receiver discharged; and that the costs of this case be borne equally by the parties hereto, but in no event shall the amount of the costs to be borne by the plaintiff or defendant exceed the sum of one hundred and eighty-four dollars and thirty-six cents ($184.36).

It is therefore ordered, adjudged, decreed that the temporary injunction herein, except so far as it effects the gas produced upon sections fifteen, twenty-two, twenty-seven, and thirty-four, Township Twenty-nine (29) north, Range Thirteen (13) east, in Washington County, state of Oklahoma, and the pipe line now used to convey said gas from said sections to the town of Caney, in the state of Kansas, in accordance with the stipulations and agreement in this case, be and the same is hereby made permanent; and the defendants, and each of them, their agents and employees, and all per-

sons claiming under them, or acting under the direction or authority of them or of either of them, be and they are hereby perpetually enjoined and restrained from piping, conveying or removing in any manner, gas from the state of Oklahoma, to any point or points beyond and outside of the state of Oklahoma, and from connecting any other pipe line or lines used for conveying gas to or with said pipe line between the sections aforementioned and said Caney, Kansas; and the receivership herein be dismissed and the receiver be, and hereby is discharged.

And it is further ordered and decreed that the costs in this
51 suit and the receivership be, and they hereby are taxed, at the sum of three hundred sixty-eight dollars and seventy-two cents ($368.72) and that each of the parties hereto pay one-half thereof, for which let execution issue after fifteen days.

T. L. BROWN, *Judge.*

WASHINGTON COUNTY,
State of Oklahoma, ss:

I, John B. Churchill, Clerk of the District Court in and for the county aforesaid, do hereby certify the above and foregoing to be a full, true and complete copy of the decree in the case of the State of Oklahoma ex rel. Chas. West, Attorney General vs. Chas. Owen et al., as the same appears of record among the files of this office.

Witness my hand and the seal of said court this 13th day of April, 1908.

[SEAL.] JOHN B. CHURCHILL,
District Clerk.

52 EXHIBIT H.

STATE OF OKLAHOMA,
County of Osage, ss:

STATE OF OKLAHOMA on the Relation of L. F. ROBERTS, County Attorney, Plaintiff,

v.

THE INDIAN TERRITORY ILLUMINATING OIL COMPANY (a Corporation), H. V. Foster, John H. Brennan, A. P. McBride, Kenneth K. McLaren, T. N. Barnsdall, Charles W. Willard, James A. Simmons, James S. Glenn, M. I. Duel, A. T. Fancher and Mortimer F. Stilwell, Defendants.

Petition.

Plaintiff states that he is the duly elected, qualified and acting county attorney within and for Osage County, in the State of Oklahoma, that the defendant, the Indian Territory Illuminating Oil Company, is a foreign corporation organized and existing under the laws of the State of New Jersey; that the defendants M. V. Foster, James S. Glenn, John H. Brennan, A. P. McBride, Kenneth K. McLaren, Charles W. Willard, James A. Simmons, M. I. Duel and A.

T. Fancher constitute its board of directors, and that the defendant Mortimer F. Stilwell is its secretary and treasurer; that the said defendant corporation has designated and appointed A. J. Biddison, late of the city of Pawnee, in Pawnee County, but now residing at the City of Tulsa, in Tulsa County, in said State, as its agent upon whom service of process may be made in any action in which said corporation may be a party, and has stipulated and agreed in writing duly filed in the office of the Secretary of State, that service upon such agent shall be taken and held as due service upon such corporation.

53 That said defendant, the Indian Territory Illuminating Oil Company, and each of the other defendants, officers and directors of said Indian Territory Illuminating Oil Company, each acting in his official representative and personal capacity, are doing and have done, and are permitting and have permitted, to be done acts which amount to a forfeiture of their rights and privileges as a corporation, and their personal rights as the representatives of such corporation, and have exercised and are exercising powers not conferred by law upon such corporation, and are doing and permitting things to be done by said corporation, and its agents and representatives which are prohibited by law in the following particulars, to-wit:

I. That the said defendant corporation, and its officers and directors as such, are engaged in the business of transporting and transmitting natural gas by means of pipe lines between various points within this state, and more particularly between points in Osage and Washington counties in this state, and is owning, maintaining and operating more than sixty miles of gas pipe lines for that purpose in said counties

II. That said defendant corporation acting by and through its officers, directors, agents, servants and employees, and more particularly through the defendant T. N. Barnsdall, as well as through divers other persons to this plaintiff unknown, is now negotiating and seeking to contract with divers municipal corporations and persons outside of the state of Oklahoma, for the purpose and with the intent of extending its gas pipe lines along, over, under across or through the highways, roads bridges streets and alleys in this state and in several counties, cities, towns and municipalities thereof, and to points outside of and beyond the boundaries of this state, and in so doing to exercise the right of eminent domain without authority of law, and to use, occupy and obstruct said highways, roads

54 bridges, streets and alleys in this state without authority of law for the purpose of transporting or transmitting natural gas between different points within the state and to points outside of and beyond the state all of which said defendant corporation, its officers, directors and employees, including said defendant Barnsdall and said unknown persons, are now threatening and attempting to do without any right, license or authority from the state of Oklahoma.

III. That prior to the 16th day of November, A. D. 1907, the said defendant corporation acquired and owned and now owns and

controls a certain leasehold interest in and to six hundred and eighty thousand acres of land in Osage County, State of Oklahoma, and acquired said leasehold interest for the exclusive purpose of mining and prospecting for mining for oil and gas and for no other purpose; that in violation of the constitution and laws of this state, said defendant corporation has engaged in and is now engaged in trading, dealing in and sub-letting said leasehold interest to certain other persons, firms and corporations, whose names are to this plaintiff at this time unknown. That the defendant corporation has never mined or prospected, and is not now mining or prospecting for oil and gas as provided for in its lease contract, but that the same is being wholly done and carried on by its said sub-lessees. That the said defendant corporation withholds from its said lessees all the gas produced from said leased premises, and retains the same as its own property, and has charged and is now charging its said sub-lessees royalties and bonusses for the privilege of mining and prospecting for oil and gas under and by virtue of their lease contracts with said defendant corporation.

IV. Plaintiff further states that the defendant Indian Territory Illuminating Oil Company is a subsidiary to, a branch of and controlled by the Standard Oil Company, a corporation organized under and by virtue of the laws of the state of New Jersey, which
55 now has and for many years past has had, by virtue of owning the controlling interest in numerous subsidiary corporations, associations and companies, a virtual monopoly in the production, transportation, refining, handling and sale of petroleum and natural gas throughout the United States; that the control of said defendant, Indian Territory Illuminating Oil Company by the Standard Oil Company is exercised through the defendants, T. N. Barnsdall, James S. Glenn, H. V. Foster, A. P. McBride, Charles W. Willard, James A. Simmons and M. I. Duel, directors of the defendant Company who are agents and representatives of said Standard Oil Company. That the said defendant, Indian Territory Illuminating Oil Company has entered into a combination and agreement with said Standard Oil Company and with the said T. N. Barnsdall and his co-defendants representatives of said Standard Oil Company, and with divers other persons to plaintiff unknown, for the purpose of enabling said Standard Oil Company to monopolize and control the entire production of natural gas in the State of Oklahoma for the purpose, with the intent and effect of illegally restraining trade and commerce within this state; that in pursuance of said agreement, understanding and purpose said defendant Corporation has in all of its sub-leasing contracts on said six hundred and eighty thousand acres of Osage lands, more than three hundred and fifty in number, (saving and excepting only its sub-lease to the Pawhuska Oil & Gas Company) reserved to itself all of the natural gas found or produced on said leasehold premises, and has refused and now refuses to permit any of its said sub-lessees (saving and excepting only said Pawhuska Company) to dispose of, sell or utilize for commercial purposes any of the natural gas produced thereon; that in further pursuance of said combination and agree-

ment between said defendant, Corporation, Standard Oil Company, said Barnsdall and others, said defendant Company has transferred and assigned and has contracted to transfer and assign to
56 said Barnsdall all of the gas produced from its said leasehold on the said six hundred and eighty thousand acres of Osage lands. That in further pursuance of said combination, agreement and purpose, said Barnsdall, together with his co-defendants, and said other persons to plaintiff unknown, have procured and now own and control leases for the entire production of natural gas on approximately five hundred thousand acres of lands in that part of the state of Oklahoma lying adjacent to said six hundred and eighty thousand acre tract in Osage County; that said last mentioned lands together with that covered by said six hundred and eighty thousand acre lease in Osage County comprise all the lands producing natural gas in the state of Oklahoma. That said several acts, agreements, contracts and combinations are in restraint of trade or commerce within this state, and are against public policy and illegal.

Wherefore, plaintiff prays the judgment of this Honorable Court that said defendant, the Indian Territory Illuminating Oil Company, be ousted from doing business within the State of Oklahoma; that it be enjoined and restrained from conducting, carrying on and exercising any corporate franchise whatsoever within this state and that the said individual defendants and each of them be restrained and enjoined from acting or assuming to act in any corporate capacity in said State; that forfeiture be adjudged of all the property, effects and franchises of said Corporation to the state; that said defendant Corporation, the Indian Territory Illuminating Oil Co., its various officers, directors, agents, servants and employees be enjoined and restrained during the pendency of this action from construction, laying, building or acquiring any pipe line for the transportation of natural gas into, through, along, over or under any public highway, road, bridge, street or alley in this state, and that they be further enjoined from transporting or transmitting natural gas between points within this state; that said defendants and each
57 of them be further restrained from conducting, carrying on and maintaining its said monopoly, combination and agreement in restraint of trade and commerce against public policy in the use and production of natural gas within the state, and that it be restrained and enjoined from disposing of, encumbering and hypothecating any of its properties or assets until all fines, penalties and forfeitures adjudged or found to be due to the state shall have been duly satisfied and discharged; and plaintiff prays for such other and further orders, judgments and decrees in the premises as may be proper.

L. P. ROBERTS,
County Attorney of Osage County.
T. J. LEAHY,
ORVILLE T. SMITH,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Osage County, ss:

L. I. Roberts, County Attorney, upon oath says upon information and belief, that the matters and things set forth in the above and foregoing petition are true.

L. F. ROBERTS.

Subscribed and sworn to before me this 1st day of December, 1908.

S. R. CRISWELL,
Notary Public, Osage County, Okla.

Com. Ex. Apr. 20, 1912.

58 Endorsed: 856. Kansas Natural Gas Company v. Charles N. Haskell, Charles West, John J. Shea, John H. Kane, Frank B. Burford, J. E. Love, J. J. McAlester, J. E. Watson and Pete Hanraty. Bill of complaint. Filed Feb. 2, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern District Oklahoma. John J. Jones, Eugene Mackey, Mackey & Scully, Columbia Bank Building.

59 United States Circuit Court, Eastern District of Oklahoma.

In Equity, 857.

THE MARNET MINING COMPANY, a Corporation of the State of West Virginia and a Citizen of that State, Plaintiff,

v.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane, and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, J. J. McAlister and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Oklahoma:

The Marnet Mining Company, a corporation of the state of West Virginia and a citizen of that state, brings this, its bill of complaint, against Charles N. Haskell, a citizen of the state of Oklahoma
60 and a resident of the county of Muskogee therein; and Charles West, a citizen of the state of Oklahoma and a resident of the county of Garfield therein; and John J. Shea, John H. Kane and Frank B. Burford, citizens of the state of Oklahoma and residents of the county of Washington therein; and J. E. Love, J. J. McAlister and A. P. Watson, citizens of the state of Oklahoma and residents respectively of the counties of Woodward, Pittsburg and Pottawatomie

therein; and Pete Hanraty, a citizen of the state of Oklahoma and a resident of the county of Pittsburg therein; and thereupon

Your orator complains and says:

First. That it is now and was during all the times hereinafter mentioned a corporation of the state of West Virginia and a citizen thereof.

Second. That Charles N. Haskell, one of the respondents, is the duly elected, qualified and acting Governor of the state of Oklahoma and a citizen of that state, and a resident of the county of Muskogee therein; that Charles West, another of the respondents, is the duly elected, qualified and Acting Attorney General of the state of Oklahoma and a citizen of that state and a resident of the county of Garfield therein; that John J. Shea, another of the respondents, is the duly appointed, qualified and acting Deputy or Special Attorney General of the state of Oklahoma, and a citizen of that state and a resident of the county of Washington therein; that John B. Kane, another of the respondents, is the duly elected, qualified and acting County Attorney of Washington County, Oklahoma, and a citizen of that state and a resident of the said county of Washington; that Frank B. Burford, another of the respondents, is the duly appointed, qualified and acting Deputy County Attorney of Washington County, Oklahoma, and a citizen of that state and a resident of that
61 county; that J. E. Love, J. J. McAlister and A. P. Watson, others of the respondents, are the duly elected, qualified and acting Corporation Commissioners of the state of Oklahoma and citizens of that state and residents respectively of the counties of Woodward, Pittsburg and Pottawatomie therein; that Pete Hanraty, another of the respondents, is the duly elected, qualified and acting Mine Inspector of the state of Oklahoma, and a citizen of that state and a resident of the county of Pittsburg therein.

Third. That in, under and beneath the surface of large tracts of land in the state of Oklahoma, and particularly in the county of Washington therein, natural gas has been discovered, and for more than four years last past has been known to exist in large quantities and of great value for use in the production of light, heat and power, and for all other purposes for which it is adapted or can be used, and during such time has attracted the attention of persons having capital and desirous of investing the same in mining and drilling for, procuring, utilizing and otherwise disposing of such natural gas for the purposes hereinbefore set forth, and that since such discovery of gas as aforesaid and in the counties of Washington, Tulsa, Wagoner, Muskogee, Creek, Nowata, Craig, Mayes, Rogers and Okmulgee, Oklahoma, and particularly in the said county of Washington, a very large number of natural gas wells have been drilled and equipped, in the drilling of which, and in the locating and development of the said gas fields, large sums of money, aggregating over a million dollars, have been expended, and large numbers of laborers, both skilled and unskilled, have been and now are actively employed.

Fourth. That the work of so drilling for natural gas in the said gas fields of Oklahoma has progressed until there has now
62 been drilled about four hundred gas wells, which are capable of producing and furnishing over one billion five hundred

million cubic feet of gas per day of twenty-four hours; that such of the said gas wells as are not being used have been capped and shut in and the gas therefrom preserved for sale and consumption; that all cities in and near the said belt in which the said gas is found have been supplied with gas distributing plants and transportation lines have been laid from the said wells in the said field to the said distributing plants, and by and through the same all persons in the said cities desiring to use the said gas for light, heat or power, or for any of the purposes for which it may be utilized, are now being fully supplied. Yet your orator charges that notwithstanding the full use of natural gas in the said cities of Oklahoma for whatever consumption the same may be put, and by all who may desire to use it, the total consumption does not and will not exceed more than fifty million cubic feet of gas per day of twenty-four hours, leaving a very large surplus of gas over and above all demands therefor in the said state, and that there is now in the said gas field wells drilled, completed and ready for immediate use, but shut in and not used by reason of the production of gas in the said belt far exceeding the demand therefor, the combined production of which will exceed one billion five hundred million cubic feet per day of twenty-four hours, and that there is in the said county of Washington alone so shut in and not used by reason of the protection exceeding the local demand over one hundred and fifty wells capable of producing and delivering seven hundred and fifty million cubic feet per day of twenty-four hours.

Fifth. Your orator further charges and states the fact to be that the cities of St. Joseph, Kansas City, Joplin, Carthage and other cities in the state of Missouri, and the cities of Wichita, Hutchinson, Winfield, Arkansas City, Topeka, Lawrence, Leavenworth, Atchi-
63 son, Kansas City, Ottawa, Independence, Caney and other cities in the state of Kansas, have in them natural gas distributing plants through which natural gas can be distributed delivered and sold to persons desiring to use the same for light, heat, fuel, power and the other purposes and uses to which the same may be put; that these distributing plants have been built and constructed at great cost and expense; that in many of the said cities, notably St. Joseph, the two Kansas Cities, Wichita, Hutchinson, Winfield, Arkansas City, Topeka, Lawrence, Leavenworth, Atchison and Ottawa, there existed for many years manufactured gas generating and distributing plants which, upon the construction of the gas trunk pipe lines about to be referred to, were replaced or supplanted by the said natural gas distributing plants, such of the manufactured gas mains and pipes as were available and could be used for such purposes being incorporated into and made a part of such natural gas distributing plants; and so much of the generating plants and the manufactured gas mains and lines as were not used in such natural gas plants were either torn up, dismantled or the use of the same wholly discontinued, so that now no manufactured gas is on sale in the said cities, and the fact is that all of the inhabitants thereof are now wholly dependent upon the use of natural gas for light, heat, fuel, power and the other purposes to which the same can and is being put (except only the limited extent to which steam, electricity and coal is or can

be used); and that the Wichita Natural Gas Company and the Kansas Natural Gas Company have, at great cost and expense, amounting to many millions of dollars, laid, built and constructed from the said cities to or near to the state line dividing the states of Kansas and Oklahoma large trunk pipe lines for the transportation of natural gas to the said cities for distribution, sale and use therein; that the transportation to and the distribution, sale and use of natural gas in the said cities has been conducted and carried on for several
64 years last past until the inhabitants and consumers thereof in the said cities now rely almost wholly upon the use of natural gas for light, heat, fuel, power and other purposes, and there has grown up and now is in the said cities a great and heavy demand and market for natural gas, which is daily growing larger as the people of the said cities become more accustomed to the use and luxury thereof; that such demand has now grown to such extensive proportions that in many of the cities, especially the two Kansas Cities, St. Joseph, Topeka, Hutchinson and Wichita, the local distributing companies supplying the same and securing their gas supply from the said gas trunk pipe lines are unable to meet the increasing demand, and there has been and now is a shortage of natural gas therein, and your orator charges that if it be permitted to construct its line hereinafter referred to the gas which it will transport through the same will largely meet and supply such shortage.

Sixth. Your orator avers and charges that the said Kansas Natural Gas Company and the said Wichita Natural Gas Company are in the market for and are willing to take and buy large quantities of natural gas for transportation by them to the several cities of Kansas and Missouri along their respective lines and supplied by them with natural gas, and there to be distributed, sold and used.

Seventh. Your orator avers and states the fact to be that by reason of the demand for natural gas in the cities of Kansas and Missouri, and the very large overproduction thereof in the state of Oklahoma, a production, as shown above, far exceeding the demand therefor, there is in the business judgment of your orator a great and growing need and demand for a gas pipe line for the transportation of natural gas from the owners and producers thereof in the state of Oklahoma to purchasers and consumers thereof in the states of Kansas
65 and Missouri, and that such a pipe line would not only be a paying investment, but also meet a great public want and perform a great public service.

Eighth. Your orator further avers that some time since it determined to and now proposes to lay, build and construct a gas pipe line out of the state of Kansas across the line dividing the states of Kansas and Missouri and into the state of Oklahoma, over the east half of the northeast quarter of Section Sixteen, Township Twenty-nine, Range Thirteen, in Washington County, Oklahoma, using therefor the rights acquired by it under the contract referred to in the next paragraph. It is also the purpose and determination of your orator to extend its said trunk pipe line further into the state of Oklahoma and lay branch or gathering lines therefrom as fast as it can acquire rights of way and make contracts for the sale and

delivery to it of natural gas from the owners of gas wells therein, the said gas in every instance to be delivered to it at the mouth of the well. Your orator further avers and declares that its said pipe line will be used by it wholly and solely for the transportation and carriage of natural gas from gas wells in the state of Oklahoma into the state of Kansas, and not in any way for local traffic in the state of Oklahoma, and that your orator will conduct and carry on no local traffic or business of any nature whatsoever within the state of Oklahoma. Your orator avers that the cost and expense of its said pipe line as it proposes to construct and build the same will exceed the sum of fifty thousand dollars. Your orator further avers that immediately upon the completion of its said pipe line it will be in the market for and is willing to take and buy large quantities of natural gas to be delivered at the mouth of the well into its said pipe line and to be transported by it out of the state of Oklahoma and into the state of Kansas for distribution, sale and use in that state.

Ninth. Your orator further avers and declares that Wil-
66 liam Inge is the owner of the east half of the northeast quarter of said Section Sixteen in Washington County, Oklahoma, and did, on and under date of January 23, 1909, at the city of Independence, Kansas, for full value received, sell and grant to Frank V. Eaton, his heirs, executors, administrators and assigns, a right of way over the same for the purpose of laying, building and maintaining gas pipe lines. A copy of the said right of way is hereto attached, marked "Exhibit A" and made a part hereof as fully as though incorporated at length herein.

Tenth. Your orator says that on and under date of January 25, 1909, the said Frank V. Eaton, in the city of Pittsburgh, Pennsylvania, did give and grant unto your orator the right or option of purchasing the said right of way at any time within five years thereafter in which your orator might desire to occupy and use the same. Your orator attaches hereto a true and correct copy of the said option, marks the same "Exhibit B" and makes the same a part hereof as fully as though incorporated at length herein.

Eleventh. Your orator further avers and charges that the transportation of natural gas by means of and through pipe lines is and has been for twenty-five years extensively carried on in the Dominion of Canada, the states of New York, Penn-sylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Missouri, Kansas, Oklahoma, Texas, Arkansas, Louisiana, and other states in the United States, and that there are now over five thousand miles of transportation gas lines laid and operated in the said states and Canada, and transportation of gas by means thereof has grown to and is now a great industry of business, with millions of dollars invested therein, and has become and now is the universal method of transporting natural gas and, in fact, is now the only known method of carrying
and transporting natural gas. That the said lines in Canada
67 and the said states are laid along and across roads, streets and other public highways without hindrance, damage or danger and, except in very rare instances and then easily remedied, without inconvenience to the traveling public or to the abutting

property owners. Your orator says further that natural gas has become and now is a widely known and well-established article of interstate commerce and the traffic therein between states has grown to enormous proportions, immense quantities thereof, aggregating each day hundreds of millions of cubic feet, being transported from Canada into New York, from Pennsylvania into New York and also into Ohio, from West Virginia into Pennsylvania and also into Ohio, from Kansas into Missouri, the cities of Kansas City, Joplin, Carthage and St. Joseph, Missouri, being supplied wholly with gas piped from Kansas; the city of Buffalo, New York, wholly with gas piped from Canada and Pennsylvania; the city of Jamestown, New York, wholly with gas piped from Pennsylvania; the city of Pittsburgh, Pennsylvania, almost entirely with gas piped from West Virginia; the cities of Cleveland and Toledo, Ohio, almost entirely with gas piped from West Virginia, and pipe lines are now about to be constructed, as your orator is informed and believes, by which gas will be piped from West Virginia to the cities of Baltimore, Maryland, and Washington, D. C.

Twelfth. That there is now laid, maintained and operated in the state of Oklahoma about five hundred miles of natural gas pipe lines and now daily in use for the transportation and carriage of natural gas both within and out of the state; that the said lines in very many instances and often at great lengths run over, along and across public highways of the state, and are now maintained and operated for the transportation and carriage of natural gas at great and high pressure therein, and wholly without hurt, hindrance, danger or inconvenience to the traveling public or the abut-
68 ting property owners, and are so laid, maintained and operated by and with the knowledge and consent of the respondents herein.

Thirteenth. That the line which your orator proposes to construct will not be laid by him along any public highway in the state of Oklahoma, but must necessarily be laid over and across certain highways in the line of its route, but that wherever the said line is laid across any public highway your orator proposes to and will lay the same at such a depth and in such a manner as not to interfere with or endanger or incommode the public travel, and in the same and identical manner as natural gas lines are now laid, maintained and operated over the public highways of the state. He further avers and declares that the said line will be laid of steel pipe tested to a pressure of over seven hundred and fifty pounds to the square inch, and will be laid with rubber packer couplings of the latest design, so built and constructed as to absolutely prevent the leakage of gas therefrom; that the pressure which he will maintain upon the said line for the transportation and carriage of gas through the same will not exceed three hundred pounds to the square inch.

Fourteenth. That, as your orator is advised, informed and believes, each of the defendants herein is, by virtue of his said office and of the Constitution and laws of the state of Oklahoma, clothed with some power and authority, and charged with some duty in the execution and enforcement of the provisions of Chapter 67 of the

Session Laws of that state enacted in 1907-1908 hereinafter referred to, and that, as such officers or otherwise, they have assumed and undertaken to execute and enforce said act both by action and proceedings in the courts of the state, and by force and arms, as hereinafter set forth. That it is the avowed purpose and intent of
69 the defendants, and each and every one of them, to prevent the transportation of natural gas produced in Oklahoma beyond the limits of that state, and to that end your orator charges and states the facts to be:

(a) That they have caused to be passed by the Legislature of the state of Oklahoma, among other laws and statutes, a certain act, law or statute known and designated as Chapter 67 of the Session Laws of 1907-1908 of the state of Oklahoma, entitled, "An Act regulating the laying, constructing and maintaining and operation of gas pipe lines for the transportation of natural gas within the state of Oklahoma, defining the modes of procedure for the exercise of the right of eminent domain for such purposes, providing for the inspection and supervision of the laying of such pipe lines and limiting the gas pressure therein, and providing penalties for the violation thereof," which provides that the transportation of natural gas shall not be engaged in or carried on by foreign corporations; that no person, individual, association or partnership shall be engaged in the transportation of gas within that state; that the transportation of natural gas shall be conducted and carried on only by corporations created and organized under the laws of that state; that if any corporation created under the laws of the state of Oklahoma shall attempt to transport gas beyond the borders thereof the charter of such corporation shall immediately terminate and be revoked, and a receiver for the company be appointed and the property of the corporation of every nature and kind be escheated and forfeited to the state. And your orator avers and charges that this act was passed solely and only for the purpose of preventing the transportation of natural gas beyond the borders of the state, and that it is wholly illegal and void because it conflicts with, offends against and is in contravention of Clause 3 of Section 8 of Article I of the Constitution of the United States granting to Congress the power to regulate commerce between the states, in that it is an abso-
70 lute inhibition upon the exportation of an article of commerce; and of the XIVth Amendment of the Constitution of the United States in that it abridges the privileges and immunities of your orator, a citizen of the United States, and deprives him of his property without due process of law, and denies to him the equal protection of the laws; and of Section 57 of Article V of the Constitution of Oklahoma in that it embraces more than one subject, no one of which is clearly expressed in its title, and the said act is neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes; and of Section 24 of Article II of the Constitution of Oklahoma in that it deprives your orator of his private property without just compensation; and of Section 32 of Article II of the Constitution of Oklahoma in that it creates a monopoly contrary to the genius of free government.

Your orator attaches hereto a true, exact and correct copy of the said law or statute, marks the same "Exhibit C" and makes the same a part hereof as fully as though incorporated at length herein.

(*b*) That they have with force and violence, and against the rights of the owners thereof and in violation of the laws and Constitution of the United States, seized a gas pipe line in course of construction across the line dividing the states of Oklahoma and Kansas, and which was to be used wholly and solely for interstate carriage and transportation of gas, and torn the same up and thrown the pipe and material of which it was being constructed back upon the Kansas side of said state line.

(*c*) That, as your orator is informed and believes, they have caused the line dividing the states of Kansas and Oklahoma to be patrolled on the Oklahoma side thereof with armed guards, ordered and instructed by them to resist with force and arms the
71 laying and building of any gas pipe line across the said state line, and to prevent with force and violence the building of any such line, and if necessary to that end to tear up and destroy the same.

(*d*) That they have caused a pipe line constructed before the state of Oklahoma was created and used wholly in the transportation and carriage of natural gas from Oklahoma into Kansas, to be thrown into the hands of a receiver that this was done by and through an action commenced in the courts of Washington County, Oklahoma, by the filing therein of a petition so cunningly, wickedly and fraudulently drawn as to conceal the fact that the said line was engaged in interstate commerce and wholly beyond the jurisdiction or control of the state of Oklahoma or any of its courts or authorities, a true copy of which petition is hereto attached, marked "Exhibit D" and made a part hereof as fully as though incorporated at length herein; that when the said suit or action was upon the petition of the defendants therein removed into this court the same was, upon the motion of the defendants herein and at their suggestion that no federal question appeared upon the face of the petition, remanded to the said courts of Washington County, Oklahoma; that the defendants herein secured the appointment of the said receiver at Chambers without notice of such proceedings to the owners of said pipe line, the defendants therein, and requiring the said receiver to give bond in the penal sum of only two thousand dollars, when in truth and fact, as your orator is informed and believes, the value of the property of the defendants therein so passing into the custody and control of the receiver was not less than four hundred thousand dollars; that after the said case was remanded to the said courts of Washington County the defendants, there being threatened by vexatious delays and adverse decisions in the said court and unable
to continue the litigation to the Supreme Court of the United
72 States, were forced to and did consent to a decree in the said court, a copy of which is hereto attached, marked "Exhibit E" and made a part hereof as fully as though incorporated at length herein; that as will appear from the said petition the ground upon which the said pipe line was so placed in the hands of such receiver,

was that it was a common nuisance, a menace to society, when in truth and fact the pipe line was laid and constructed in the very best of good workmanship and skill, and was maintained and operated in good order and condition and a high state of efficiency, and both where it was laid over, across and along public highways as well as where it ran across public lands, was free from leaks and without menace, danger or inconvenience to the traveling public or to the owners of the land over which it passed, and that while the land was in the possession and control of the said receiver and at the time of entering the said decree and ever since it was operated and maintained, and at the present time is operated and maintained in the same order, condition and manner and high efficiency as it was at the time the said petition was filed charging it with being a common nuisance and menace.

(*f*) That the defendants have also caused certain other suits to be entered and instituted in the courts of Washington County, Oklahoma, against the Kansas Natural Gas Company and the Wichita Natural Gas Company, certain corporations foreign to the state of Oklahoma, charging them with violating the laws of Oklahoma and seeking to enjoin them from building their lines in the state of Oklahoma, and by proceedings at Chambers granted without notice to the defendants therein or any service having ever been made upon them or their voluntary appearance, have secured injunctions against the said defendants without their having ever been in the state of Oklahoma or having ever done any business therein; that the petitions in the said suits were attempted to be drawn so cun-
73 ningly as to conceal the federal question involved therein and so prevent a removal of the suits into this court, and so compel the defendants therein to submit to vexatious delays and adverse decisions in the courts of Oklahoma, and prevent as long as possible the appeal of the cases to the Supreme Court of the United States. Your orator attaches hereto true, exact and correct copies of the petitions in the said suits, marks them "Exhibit F" and "Exhibit G," respectively, and makes them parts of this bill of complaint as fully as though incorporated at length herein.

(*f*) That the defendants have also caused a certain other suit to be instituted in the courts of Osage County, Oklahoma, against (joining also certain of its officers as defendants) The Indian Territory Illuminating Oil Company, a corporation of the state of New Jersey, and lawfully authorized and empowered to engage in the mining for, piping, transportation and marketing of natural gas in the Indian Territory long before Oklahoma became a state, charging the defendant with violating the laws of Oklahoma, of seeking to oust the said corporation from the state of Oklahoma, confiscate its property and restrain and enjoin it from transporting and carrying natural gas, when in truth and fact, as your orator is informed and believes, the real and true object of the said suit is to prevent the piping and carriage of natural gas by the said corporation beyond the borders of the state of Oklahoma. Your orator attaches hereto a true, exact and correct copy of the petition in the said suit, marks

the same "Exhibit H" and makes the same a part hereof as fully as though incorporated at length herein.

Fifteenth. That, as your orator is informed and believes, the defendants threaten and it is their purpose to tear up and destroy by force and violence any gas pipe line transporting and piping natural gas out of and from the State of Oklahoma, including the
74 proposed line of your orator, and to prevent by force and violence and in trespass upon your orator's property and rights the construction and operation of the same; that they also threaten and it is also their purpose to institute by virtue of the said act, law or statute of Oklahoma suits in the courts of Washington County and elsewhere in Oklahoma against all persons, firms or corporations, including therein your orator, to restrain and prevent the construction and operation of all lines to be used in the transportation and carriage of gas out of and from the state of Oklahoma; that they also threaten and it is also their purpose to so cunningly prepare and draw the petitions in such proposed suits that they will conceal and not disclose the fact that the pipe lines, the construction of which they threaten to prevent, are engaged wholly and solely in the interstate transportation and carriage of natural gas, and so prevent a removal of the same into the federal courts and thus attempt to submit your orator and others so proposing to construct interstate lines to vexatious delays and adverse decisions in the courts of the state of Oklahoma, and prevent as long as possible any appeal therein to the Supreme Court of the United States.

Sixteenth. That even while the defendants were engaged in the wrongful and unlawful acts and doings hereinbefore mentioned and recited and committed for the purpose of preventing the construction and operation of any gas line used for piping and transporting natural gas out of and from the state of Oklahoma, the defendants were permitting the operation of gas pipe lines from the states of Kansas and Arkansas into the state of Oklahoma, and the citizens of Oklahoma were enjoying the benefits of gas so transported into Oklahoma from the states of Arkansas and Kansas, notably at or near Arkansas City, Kansas, and Forth Smith, Arkansas.

75 Seventeenth. That your orator's rights in the premises and in the operation of the said pipe line are of great value and that the defendants' wrongful and illegal acts and deeds hereinbefore mentioned are causing and will cause your orator great and irreparable pecuniary loss, damage and injury, and that the amount of such direct loss, damage and injury to your orator is more than two thousand dollars, exclusive of interest and costs, and your orator verily believes that if such wrongful and illegal acts and deeds of the defendants are continued they will amount to many more thousands of dollars; that the profits which it will realize from the operation of the said pipe line will aggregate many thousands of dollars.

Eighteenth. Your orator further avers and states the fact to be that the natural gas which it will transport through its said pipe line into the state of Kansas is very largely and in fact almost wholly produced and mined from lands owned by Indians, placed by the laws of the United States under the authority, dominion and control

of the Secretary of the Interior and under leases to mine and produce natural gas therefrom, made by said Indians by and with the approval and consent of the Secretary of the Interior while the Indian Territory still existed and long before the state of Oklahoma was created.

Nineteenth. Your orator further avers and says that there has been laid and is now being operated a six-inch gas pipe line running from the city of Caney in Montgomery County, Kansas, southwardly and southeastwardly across the line dividing the states of Kansas and Oklahoma to and into the state of Oklahoma, which line is, as your orator is informed and believes, owned by William Lanyon, and has been for many months last past used in the transportation of gas out of and from the state of Oklahoma and into
76 the state of Kansas, and the state of Oklahoma and none of its officials have made any objection thereto, although, as your orator is informed and believes, the maintenance and operation of the said line has been known to, acquiesced in and permitted by the defendants herein.

Wherefore your orator charges:

1. That such act, law or statute of Oklahoma hereto attached and marked "Exhibit C," as well as all laws of that state so far as it is attempted to apply them to persons, firms or corporations engaged, like your orator, wholly and only in the interstate carriage and piping of natural gas, are absolutely unconstitutional and utterly null and void and without any force and effect whatever, because by the provisions of the Constitution of the United States hereinbefore referred to, the state of Oklahoma and all its officers, and each and every citizen thereof, including the respondents herein, have no power, authority, dominion, control or jurisdiction over persons, firms or corporations engaged like your orator wholly and solely in the transportation and carriage of natural gas between states, such persons, firms or corporations so engaged being wholly within the control, regulation, power, authority, jurisdiction and protection of the laws and Constitution and courts and government of the United States of America, and no other.

2. That such act, law or statute of Oklahoma hereto attached and marked "Exhibit C," embracing as it does more than one subject, no one of which is clearly expressed in its title (being neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes), infringes upon the provisions of the Constitution of Oklahoma as hereinbefore referred to, and is absolutely unconstitutional and wholly null and void.

77 3. That any attempt by the defendants to carry out their said threats to tear up and destroy your orator's proposed pipe line, or to annoy and harass it with such threatened suits in the state courts, are gross and repeated trespasses upon your orator's rights and property, and will work it great and irreparable loss and injury, for which it has no adequate remedy at law.

4. That, if the defendants prevent the building of its said line, its property in the said right of way so granted to and paid for by it, and its rights in and to the said line itself and the profits therefrom

and the operation thereof, will be wholly lost to it and taken from it without due process of law, and your orator abridged of its privileges and immunities as a citizen of this Nation and denied the equal protection of the laws and deprived of its property without just compensation, and oppressed by a monopoly contrary to the provisions of the Constitutions of the United States and the state of Oklahoma as hereinbefore referred to.

In consideration whereof and for as much as your orator can only have adequate relief in this Honorable Court, and to the end that your orator may be saved the trouble, delays and expense incident to separate suits against the said defendants for relief from and against the wrongful and unlawful acts and doings of the defendants hereinbefore complained of, your orator prays this Honorable Court to take cognizance of the several charges set forth in the premises; and

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein prayed for and may, according to the best and utmost of their several and respective knowledge, remembrance, information and belief,

78 full, true, direct and perfect answer make to all the matters aforesaid and to each of the several interrogatories hereinafter numbered and set forth, but not upon oath, the answer under oath being waived, as by note hereunder written, they are respectively required to answer, that is to say:

1. Did you not draft the act, law or statute, a copy of which is hereto attached and marked "Exhibit C," before the same was presented to the Legislature of the state of Oklahoma?

2. Did you not draft the said act, law or statute for the express purpose of preventing the construction and operation of gas lines engaged or to be engaged in the piping or carriage of gas into the states of Kansas and Missouri?

3. If you did not draft the said act, law or statute did you not read and approve the same before the same was presented to the Legislature of the state of Oklahoma?

4. Was not the act, law or statute approved by you and presented to the said Legislature for the express and only purpose on your part of preventing the piping and transporting of gas out of and from the state of Oklahoma?

5. Did you not in or about November, 1907, send a telegram, letter or other communication to John J. Shea, one of the above-named respondents, directing him to prevent the laying and construction of gas pipe lines from Oklahoma into Kansas?

6. If you did not send the telegram, letter or other communication referred to in the fifth interrogatory please attach to your answer a copy of such telegram, letter or communication if in writing, and if not state the substance thereof.

79 7. Did you not in or about November, 1907, receive a telegram, letter or other communication from Charles N. Haskell, one of the above-named respondents, directing you to prevent

the laying and construction of gas pipe lines from Oklahoma into Kansas?

8. If you did receive the telegram, letter or other communication from Charles N. Haskell referred to in the seventh interrogatory please attach to your answer a copy of such telegram, letter or other communication if in writing, and if not state the substance thereof.

9. Did you not in or about November, 1907, tear up with force and violence a gas pipe line laid or being laid across the line dividing the states of Kansas and Oklahoma?

10. If you say you did not yourself tear up such line please state whether or not you did not order and direct the same to be torn up by others?

11. Was not, in or about November, 1907, a gas pipe line laid or being laid across the line dividing the states of Kansas and Oklahoma torn up and destroyed with force and violence?

12. State, if you know, who tore up the said line and who ordered and directed the same to be torn up.

13. If you answer and say that you did not yourself tear up and destroy the said gas pipe line state whether or not the tearing up and destruction of the said line was not done with your knowledge, acquiescence and approval.

14. Did you not institute or cause to be instituted in the District Court of Washington County, Oklahoma, a suit in which
80 the state of Oklahoma, ex relatione John H. Kane, County Attorney of Washington County, Oklahoma, was plaintiff and the Kansas Natural Gas Company and the Wichita Natural Gas Company and other parties whose names were to the plaintiff unknown were defendants?

15. Was not the said suit instituted for the purpose of enjoining and preventing the defendants from building and constructing a gas pipe line out of and from the state of Oklahoma into the state of Kansas?

16. Did you not prepare or attempt to prepare the petition or bill of complaint in the said suit in such a form that no federal question would appear on the face of the plaintiff's pleadings therein?

17. Did you not institute or cause to be instituted in the District Court of Washington County, Oklahoma, a suit wherein the state of Oklahoma, ex relatione Charles West, Attorney General, was plaintiff and Charles Owen and —— Connelly were defendants?

18. Was not the said suit instituted for the sole purpose of enjoining and preventing the defendants from operating a gas pipe line then running out of and from the state of Oklahoma into the state of Kansas?

19. Did you not prepare or attempt to prepare the petition or bill of complaint in the said suit in such a form that no federal question would appear on the face of the plaintiff's pleadings therein?

20. Did not the defendants in that suit remove the case to this, the Circuit Court of the United States in and for the Eastern District of Oklahoma?

81 21. Did you not appear and move the remanding of the said case to the said District Court of Washington County, Oklahoma, because no federal question appeared upon the face of the pleadings?

22. Was not the case so remanded?

23. After the case was remanded was not a consent decree entered therein, and is not "Exhibit E." hereto attached, a correct copy thereof?

24. Was not a receiver appointed in the said case?

25. During the time the said receiver was in charge of the said pipe line and after such consent decree was entered was not the pipe line referred to in the pleadings in the said case operated in exactly the same manner as it was before the petition therein was filed?

26. Did you not institute or cause to be instituted in the District Court of Osage County, Oklahoma, a suit wherein the state of Oklahoma ex relatione L. E. Roberts, County Attorney, was the plaintiff, and the Indian Territory Illuminating Oil Company (a corporation), H. V. Foster, John H. Brennan, A. D. McBride, Kenneth K. McLaren, T. N. Barnsdall, Charles W. Willard, James A. Simmons, James S. Glenn, M. I. Duel, A. T. Fancher and Mortimer F. Stilwell were defendants, and was not the said suit instituted for the express purpose, inter alia, of preventing the building and construction of gas pipe lines conveying natural gas out of and from the state of Oklahoma into the states of Kansas and Missouri, or either or both of them?

27. Did you not patrol or cause to be patrolled with guards or patrols, either armed or unarmed, the south side of the state line dividing Kansas and Oklahoma?

82 28. Did you not instruct or order the said guards or patrols, or cause them to be instructed or ordered to prevent with force and violence the building or construction or any gas pipe line across the said state line?

29. Was not the said state line so patrolled?

30. Who caused the said state line to be so patrolled?

31. What were the instructions given to the said guards or patrols?

32. Was and is it not your purpose to prevent the building and construction of gas line running out of Oklahoma and the piping and transportation of natural gas out of and from the said state?

Wherefore, your orator, needing relief, prays:

First. That the said defendants, and each and every of them, may be made defendants to this bill of complaint and compelled to answer each and every allegation therein contained, but not under oath, the answer under oath being expressly waived.

Second. That it be adjudged and decreed that Chapter 67 of the Session Laws of 1907-1908 of the state of Oklahoma, "Exhibit C," is illegal and void because in conflict with, offending against and in contravention of Clause 3 of Section 8 of Article I of the Constitution of the United States, in that it is an absolute inhibition upon the exportation from the state of Oklahoma of an article of commerce; and of the XIVth Amendment of the Constitution of the United States in that it abridges the privileges and immunities of your

orator, a citizen of the United States, and deprives it of his
83 property without due process of law, and denies to it the equal protection of the laws; and of Section 57 of Article V of the Constitution of Oklahoma in that it embraces more than one subject, no one of which is clearly expressed in its title, and it is neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes; and of Section 24 of Article II of the Constitution of Oklahoma in that it deprives your orator of its property without just compensation; and of Section 32 of Article II of the Constitution of Oklahoma in that it creates a monopoly contrary to the genius of free government.

Third. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which would result from the threatened enforcement of said act, and that such injury would be irreparable.

Fourth. That the said defendants, and each and every of them, may be restrained from committing any of the acts and deeds herein complained of, and from any further violation of your orator's rights in the premises, by a writ of injunction issuing out of and under the seal of this Honorable Court, perpetually enjoining and restraining the said defendants, and each and every of them, their respective agents, servants, attorneys, workmen and employees, from tearing up, destroying or in any way interfering with the laying, building and construction of your orator's said pipe line; and from instituting, prosecuting or conducting any suits, and from suing out any writs or process in any of the state courts of Oklahoma against your orator for the purpose of enjoining, restraining or interfering with it in the laying, building, construction, maintenance or operation of its said gas pipe line, either under the authority of the said act, law or statute, "Exhibit C," or any other law or statute of the state of Oklahoma, or under any pretended common law,
84 right, rule of action or unwritten law of the state of Oklahoma.

Fifth. That a provisional or preliminary injunction be issued forthwith, restraining and enjoining the said defendants and each and every of them, their respective agents, servants, attorneys, workmen and employees, from committing any of the acts and deeds herein complained of by your orator, and from tearing up, destroying or in any way interfering with the laying, building and construction of your orator's said pipe line, and from instituting, prosecuting or conducting any suits and suing out any writs of process in any of the state courts of Oklahoma against your orator for the purpose of enjoining, restraining or interfering with him in the laying, building, construction, maintenance or operation of his said gas pipe line, either under the authority of the said law or statute, "Exhibit C," or any other law or statute of the state of Oklahoma, or under any pretended common law, right, rule of action or unwritten law of the State of Oklahoma.

Sixth. That the said defendants be decreed to pay the costs of this suit.

Seventh. That this Honorable Court grant your *other* such other

and further relief as the equity of the case may require and to your Honors may seem meet.

Eighth. And may it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayer of its bill, but also a writ of subpœna of the United States of America directed to the said defendants, and each and every of them, commanding them, and each and every of them, on a day certain to appear and answer unto this bill of complaint and to abide and perform
85 such order, direction and decree as to your Honors may seem meet and proper and as required by the principles of law, equity and good conscience.

And your orator will ever pray.

THE MARNET MINING COMPANY,
By —— ——, *Its President.*

Attest:

—— ——, *Its Secretary.*

JOHN J. JONES,
EUGENE MACKEY,
Solicitors for the Complainant.

NOTE.—The respondent, Charles N. Haskell, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

The respondent, John J. Shea, is required to answer all of the above interrogatories numbered respectively 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

The respondent, John H. Kane, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31 and 32.

The respondent, Frank B. Burford, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31 and 32.

86 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Be It Remembered that on this — day of January, in the year of our Lord one thousand nine hundred and nine, before me, a Notary Public in and for the said county and state, personally appeared Frank V. Eaton, who being by me first duly sworn according to law, says that he is the President of the above-named complainant, The Marnet Mining Company, and that he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof and that the statements made therein are true of his own knowledge and belief, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

—— ——.

Subscribed and sworn to before me the day and year last above written. In witness whereof I have hereunto set my hand and affixed my notarial seal.

——— ———,
Notary Public.

My commission expires —.

87 EXHIBIT A.

For and In Consideration of the sum of One Dollar, to us in hand paid, receipt of which is hereby acknowledged, and the further consideration of Twenty-five (25) Cents per rod to be paid when such grant shall be used or occupied, we, William Inge and Lucy J. Inge, his wife, do hereby grant to Frank V. Eaton, successors or assigns, the right of way to lay, maintain, alter, repair, operate and remove pipe lines for the transportation of oil or gas, and erect, maintain and operate telegraph or telephone lines, if the same shall be found necessary, on, over and through certain lands, situate in Washington County, State of Oklahoma, described as follows:

Lot One (1) and the Southeast Quarter of Northeast Quarter of Section Sixteen (16), Township Twenty-nine (29), Range Thirteen (13) East, containing Seventy-three and Thirty-six Hundreths (73.36) acres, more or less, with ingress and egress to and from the same. The said grantors, their heirs or assigns, to fully use and enjoy the said premises, except for the purposes hereinbefore granted to the said grantee, who hereby agrees to pay any damages which may arise to crops and fences from the laying, maintaining and operating said lines, said damage, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the said grantors, heirs or assigns; one by said grantee, successors or assigns, and the third by the two so appointed as aforesaid, and the award of three such persons shall be final and conclusive.

In Witness Whereof, the parties hereto have set their hands and seals this 23rd day of January, A. D. 1909.

WILLIAM INGE. [SEAL.]
LUCY J. INGE. [SEAL.]

Signed, sealed and delivered in the presence of

——— ———
——— ———

88 COUNTY OF MONTGOMERY,
State of Kansas, ss:

Before me, the undersigned, a Notary Public in and for said county and state, on this, the 23rd day of January, A. D. 1909, personally appeared William Inge and Lucy J. Inge, his wife, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the

same as their free and voluntary act and deed for the uses and purposes therein set forth.

ERNEST SEWELL,
[L. S.] *Notary Public.*

My commission expires April 5th, 1911.

EXHIBIT B.

Know All Men By These Presents, That I, F. V. Eaton, of Pittsburgh, Pennsylvania, for and in consideration of ten dollars lawful money of the United States of America unto me well and truly paid by The Marnet Mining Company, a corporation, have granted, sold and given unto the said The Marnet Mining Company, its successors and assigns, the right or option to take and acquire all my right, title and interest in, to and under that certain contract and right of way hereto attached and made to me by William Inge under date of January 23, 1909, and granting to me the right of way to lay, maintain, alter, repair, operate and remove pipe lines for the transportation of oil or gas, and to erect, maintain and operate telegraph or telephone lines if the same shall be found necessary, on, over and through certain lands in Washington County, Oklahoma, and being Lot One and the southeast quarter of the northeast quarter of Section Sixteen, Township Twenty-nine, Range Thirteen
89 east, and containing seventy-three and thirty-six one-hundredths acres, more or less.

To Have and To Hold unto the said The Marnet Mining Company, its successors and assigns, forever.

This contract made, executed and delivered in the city of Pittsburgh, Pennsylvania.

In Witness Whereof, I, F. V. Eaton, have hereunto set my hand and affixed my seal this twenty-fifth day of January, in the year of our Lord one thousand nine hundred and nine.

F. V. EATON. [SEAL.]

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Be It Remembered that on this twenty-fifth day of January, in the year of our Lord one thousand nine hundred and nine, before me, a Notary Public in and for the said county and state, personally appeared the above-named F. V. Eaton, personally known to me and known to me to be the same and identical person described in and who executed the foregoing instrument, and in due form of law acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth, to the end that the same might be recorded as such.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

CORNELIUS D. SCULLY,
Notary Public.

My commission expires Jan. 19, 1911.

90

Exhibit C.

Chapter 67.

Pipe Lines.

Regulating Gas and Oil Pipe Lines.

Article I.

An Act Regulating the laying, constructing, and maintaining and operating of gas pipe lines for the transportation of natural gas within the state of Oklahoma, defining the modes of procedure for the exercise of the right of eminent domain for such purposes. Providing for the inspection and supervision of the laying of such pipe lines and limiting the gas pressure therein, and providing penalties for the violation thereof.

Be It Enacted by the People of the State of Oklahoma:

Section 1. Any firm, co-partnership, association or combination of individuals may become a body corporate under the laws of this state for the purpose of producing, transmitting, or transporting natural gas to points within this state by complying with the general corporation laws of the state of Oklahoma, and with this Act.

Sec. 2. No corporation organized for the purpose of, or engaged in the transportation or transmission of natural gas within this state shall be granted a charter or right of eminent domain, or right to use the highways of this state unless it shall be expressly stipulated in such charter that it shall only transport or transmit natural gas through its pipe lines to points within this state; that it shall not connect with, transport to, or deliver natural gas to individuals, associations, co-partnerships, companies or corporations engaged in transporting or furnishing natural gas to points, places or persons outside of this state.

Sec. 3. Foreign corporations formed for the purpose of, or
91 engaged in the business of transporting or transmitting natural gas by means of pipe lines, shall never be licensed or permitted to conduct such business within this state.

Sec. 4. No association, combination, co-partnership or corporation shall have or exercise the right of eminent domain within this state for the purpose of constructing, or maintaining a gas pipe line or lines within this state, or shall be permitted to take private or public property for their use within this state, unless expressly granted such power in accordance with this Act.

Sec. 5. The laying, constructing, building and maintaining a gas pipe line or lines for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets, or alleys in this state, or of any county, city, municipal corporation or any other public or private premises within this state is hereby declared an additional burden upon said highway, bridge.

road, street or alley, and any other private, or public premises may only be done when the right is granted by express charter from the state and shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law.

SEC. 6. All pipe lines for the transportation or transmission of natural gas in this state shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mining inspector for such duty, and the expenses of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.

SEC. 7. No pipe line for the transportation or transmission of natural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of testing such lines, and gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas or used on or
92 in any gas well within this state.

SEC. 8. Any corporation granted the right under the provisions of this Act to exercise the right of eminent domain, or use the highways of this state to construct or maintain a gas pipe line or lines for the transportation or transmission of natural gas to points within this state, which shall transport or transmit any natural gas to a point outside of, or beyond this state, or shall connect with or attempt to connect with or threaten to connect with any gas pipe line furnishing, transporting, or transmitting gas to a point outside of, or beyond this state, shall by each or all of said acts, forfeit all right granted it or them by the charter from this state, and said forfeiture shall extend back to the time of the commission of said act or said acts in violation of this Act; and such act or acts shall of themselves work a forfeiture of any and all rights of any and every kind and character which may be or may have been granted by the state for the transportation or transmission of natural gas within this state, and all the property of said corporation and all the property at any time belonging to said corporation, at any time used in the construction, maintaining or operation of said gas pipe line or lines shall, in due course of law, be forfeited to and be taken into the possession of the state through its proper officer and in said action there shall be a right to the state of the appointment of a receiver, either before or after the judgment, to be exercised at the option of the state, and the officer taking possession of said property shall immediately disconnect said pipe line or lines at a proper point in this state from any pipe line or lines going out of, or beyond the state. And said property shall be sold as directed by the court having jurisdiction of said proceedings, and the proceeds of said sale shall be applied, first to the payment of the cost of such proceeding, and the remainder, of any, paid into the school fund of the state, and said charter under
93 which said act or acts were committed shall be revoked, and no charter for the transportation or transmission of natural gas shall ever be granted to any corporation having among its stockholders any person who was one of the stockholders of said corpora-

tion whose charter has or may have been forfeited as aforesaid, and if any such charter shall have been granted, and thereafter a person shall become a stockholder thereof who was one of the stockholders of the corporation whose charter has been or may have been forfeited, as herein provided, the charter of said corporation, one of whose stockholders is as last named, shall therefore be forfeited and revoked. Provided, that any person who may be denied the right to become a stockholder as above prescribed may be granted the right to become such stockholder by the corporation commission, when such person shows to such commission that he was not a party to the former violation of this Act.

SEC. 9. No pipe lines for the transportation or transmission of natural gas shall be laid upon private or public property when the purpose of such line is to transport or transmit gas for sale to the public until the same is properly inspected as provided in this Act; and before any gas pipe line company shall furnish or sell gas to the public, it shall secure from the inspector a certificate showing that said line is laid and constructed in accordance with this Act, and under the inspection of the proper officer, provided, that nothing in this Act shall be construed to prevent persons drilling for oil and gas from laying surface lines to transport or transmit gas to wells which are being drilled within this state and further provided, that factories in this state may transport or transmit gas through pipe lines for their own use for factories located wholly within this state, upon securing the right of way from the state over or along the highways and from property owners to their lands.

SEC. 10. That no person, firm or association or corporation
94 shall ever be permitted to transmit or transport natural gas by pipe lines in this state or in this state construct or operate a pipe line for the transmission of natural gas, except such persons, firms, associations, or corporations be incorporated as in this Act provided, except as in section 9 of this Act, and provided further that all persons, firms, corporations, associations and institutions now doing the business of transporting or transmission of natural gas in this state and otherwise complying with this Act are hereby permitted to incorporate under the provisions of this Act within ten days after the passage and approval of the same.

SEC. 11. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 12. An existing emergency is hereby declared by the legislature for the preservation of the public peace, health and safety of the state.

SEC. 13. This act shall take effect from and after its passage and approval as provided by law.

Approved December 21, 1907.

95 EXHIBIT D.

Petition in Equity.

In the District Court of the State of Oklahoma in and for Washington County.

THE STATE OF OKLAHOMA on the Information and Relation of CHAS. WEST, Attorney General, Plaintiff,

vs.

CHAS. OWEN and —— CONLEY, Whose Christian Names *are* Unknown, Defendants.

In the District Court of the State of Oklahoma in and for Washington County.

Comes now Charles West, the Attorney General of the State of Oklahoma, and inform- the Court, and gives the Court to know that in the County of Washington, in this State, defendants, Chas. Owen and —— Conley, whose christian names *are* unknown, are constructing and operating a pipe line transmitting natural gas between two or more points in this State, and as such are connecting at the State line with other like lines, without authority of law so to do.

That plaintiff does not know whether the defendants are committing said acts under the guise of the character of a corporation or as a co-partnership, or as individuals, but that if said acts are being committed under color of a charter of a corporation said corporation has not accepted completely all the provisions of the Constitution applicable to transmission Companies and other public service corporations.

That said defendants are, without authority so to do, entering upon and laying gas pipes in, through and over highways of the State and private property, without being entitled to the benefit of
96 the right of eminent domain in this State, and without having become a body corporate, pursuant to, and in accordance with the laws of this State.

That said defendants, in so doing, are keeping and maintaining a common nuisance in that they are thereby annoying, injuring and endangering the comfort, repose, health and safety of the people of this State, by attempting to exercise the right of eminent domain without any authority, therefor, and by unlawfully interfering with, obstructing and tending to obstruct, and rendering dangerous for passage the highways of the State over, through and across which gas pipe line is being constructed and operated and rendering other persons, to-wit: the owners of the land over which said gas pipe line is constructed and operated insecure in the use of their property by using the same for the transmission of natural gas from points to points in this State without authority so to do; and are rendering other persons, to-wit: the citizens of the State and owners of land therein insecure in their property, to wit: natural gas,

by piping natural gas through said pipe out of this State into the State of Kansas, and thereby withdrawing from the resources of this State valuable property, without authority so to do. That defendants are thus acting as if under a franchise or right without any authority so to do, and threaten to continue their said unlawful acts, and to increase the same by constructing and operating their said unlawful business in a southwardly direction, over, through and across the lands of other persons and other highways of the State.

That plaintiff is without any adequate remedy according to the Courts of the common law and is suffering irremediable injury in that there is no way to substitute and replace the natural gas thus transmitted away from the land of private persons and from this State into the State of Kansas. That under the surface of the earth there are connections between some and many of the deposits of natural gas, so that in piping the gas from one gas well tends
97 to exhaust the supply of natural gas under the lands of other persons at a great distance therefrom.

Wher-fore, the plaintiff prays that this Court grant an order restraining, and enjoining defendant-, and all their agents and servants, abettors, comforters, assistants and accessories from in any way constructing or operating any natural gas pipe line in this State, or laying or constructing the same in, through or over the lands of any persons in this State, or any of the highways in this State, and that a Receiver be appointed to take possession of all of said property of defendant- so used in constructing and operating said natural gas pipe line in this State to preserve the supply of natural gas for the citizens of this State from further waste, and for such other relief as the equity of the case may warrant, and for the costs of this action.

STATE OF OKLAHOMA,
By CHAS. WEST,
Attorney General, and
JOHN J. SHEA,
Assistant Attorney General.
SIDELL & SHIPMAN.

STATE OF OKLAHOMA,
County of Washington, ss:

John J. Shea, being first duly sworn, states that he is one of the Attorneys of the relator in the above entitled cause; that he has read the foregoing petition and is informed from persons likely to know the truth of the same and verily believes the above statements to be true to the best of his information and belief.

JOHN J. SHEA.

Subscribed and sworn to before me, this 13th day of December.

[SEAL.] JOHN B. CHURCHILL,
Clerk Dist. Court.

98 EXHIBIT E.

STATE OF OKLAHOMA,
County of Washington, ss:

In the District Court.

STATE OF OKLAHOMA ex Rel. CHAS. WEST, Attorney General,
Plaintiff,
vs.
CHARLES OWEN et al., Defendants.

Stipulation.

It is agreed by and between the state of Oklahoma and Chas. Owen, et al., that the decree attached hereto may be signed by Hon. T. L. Brown, Judge of the Second Judicial District at Vinita, and may be entered at Bartlesville, with the same force and effect as if the same were signed and entered in open court at Bartlesville.

It is further agreed that the receiver herein, Jay H. Mullen, may make report of his doings to the Hon. T. L. Brown, Judge, who may examine, act upon, and approve said report in Chambers, directing the clerk at Bartlesville to enter the same of record there, all of which shall have the same force and effect as if it were done in open court.

Dated this 8th day of April, 1908.

(Signed) STATE OF OKLAHOMA,
By JOHN J. SHEA,
Special Attorney General.
CHARLES OWEN AND
OWEN & CONNELLY.

99 STATE OF OKLAHOMA,
County of Washington, ss:

In the District Court.

STATE OF OKLAHOMA ex Rel. CHAS. WEST, Attorney General,
Plaintiff,
vs.
CHARLES OWEN et al., Defendants.

Precedent for Decree.

Now on this 8th day of April, 1908, the same being one of the days of the regular ——, 1908, term of this court, this cause came on to be heard upon the pleadings and evidence taken herein, and a stipulation and agreement which is in words and figures as follows:

In settlement of the controversy pending between the state of Oklahoma on the information of the Attorney General vs. Charles Owen, it is stipulated that all of the pipe lines, the subject matter

in the controversy in the hands of the receiver, *is* the private property of Charles Owen; that G. W. Connelly owns a well that is attached to said line but has no ownership in any part of the line from the point where the line going from Connelly's well goes into the main trunk line of the defendant, Charles Owen.

That Charles Owen makes the statement, that upon the truth of the same in all respects, the following settlement and arrangements are made:

That in the estate of Kansas he serves gas to Cheyenne Window Glass Co., Caney, Kansas, Baker Bros. Glass Co., Caney, Kansas, Caney Glass Co., Caney, Kansas, to the residence of Chas. Owen, Caney, Kansas, Jno. Foot, Caney, Kansas, Wm. Williams, W. W. Barr, for domestic use to Connelly Flats, Caney Kansas, the
100 residence of J. D. Canary, and to the Independence Gas Company of Caney, Kansas, which is furnishing gas to a green house and several dwelling houses; and thereby states that he does not furnish gas to any one except in, and not outside of, the *incorporate* limits of the town of Caney, Kansas, and Caney Township, and does not furnish gas to any Gas Company or any transmitter of gas except the said Independence Gas Company.

And it is thereupon agreed that so far as the authorities of the State of Oklahoma have authority therein that the statu quo now existing as stated above shall be maintained, it being expressly understood that the Independence Gas Company shall not increase its consumption from the pipe of Chas. Owen or any pipes leading from said four excepted sections, and that no gas shall ever be furnished to any other furnisher or transmitter of gas anywhere, but that the consumption of the private persons and businesses above named may be increased at any time to any amount that they themselves can use in the way they are now using it, but the kind of use shall not be changed.

The said Chas. Owen hereby undertakes to incorporate a gas transmission company in the state of Oklahoma in all respects according to law, and to transfer to it all of his leases and rights for the transmission of gas or laying of gas pipes, subject to the approval of the Secretary of the Interior, except that from on four sections of land, section fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), Township Twenty-nine (29), Range Thirteen (13) in the county of Washington, Oklahoma, and all the lines in these four sections are to be entirely disconnected if now connected, and if not now connected are never to be connected with any of the lines to be transferred to said Oklahoma corporation; and upon the performance of these undertakings the suit now pending is to be settled by a judgment in favor of the state of Oklahoma, making the injunction perpetual, except as to the transmission of gas from said four
101 sections into the places and business of persons named above through the line already in existence owned by said Chas. Owen, and that as to it the pending contracts are to be carried to completion but no new contracts are to be made without further agreement between the signing parties for the supply of gas except in the state of Oklahoma. And in case the state of Oklahoma shall not agree to any further contracts that none shall be made at al.

The intent of the foregoing agreement is that said Chas. Owen shall in all respects comply with the law of Oklahoma as to the transmission of natural gas and place himself in a position so to do within a reasonable time, and that in view of the fact that there is a contention between the signing parties as to whether contracts made by him to furnish gas in Kansas prior to statehood may be carried to completion or not, that he shall be allowed to carry the same to completion if drawn from the four sections above named.

Said Chas. Owen shall be given the right to drill as many wells as he may deem proper within said four sections, and for it to furnish gas anywhere in Oklahoma through his said corporation to be incorporated in Oklahoma, but that the lines of said corporation shall never be connected with lines transmitting gas into the state of Kansas. Said corporation shall be formed within thirty days from this time and application to the Secretary of the Interior to transfer his leases within ten days after said incorporation and he shall have sixty days from this time for the performance of any physical connection or disconnection herein made necessary.

CHAS. WEST,
Attorney General.
CHAS. OWEN.

And said stipulation and agreement is by the Court in all things approved, ratified and confirmed.

And the court being fully advised in the premises doth find the issues in favor of the plaintiff, and doth further find that the
102 temporary injunction and restraining order heretofore granted herein should be made perpetual, except in respect of the gas produced upon sections fifteen, twenty-two, twenty-seven, and thirty-four of Township twenty-nine (29) north, Range thirteen (13) east, in Washington County, state of Oklahoma, and the pipe line used at the present time to convey said gas from said sections to the town of Caney, in the state of Kansas; and that the receivership herein be dismissed and the receiver discharged; and that the costs of this case be borne equally by the parties hereto, but in no event shall the amount of the costs to be borne by the plaintiff or defendant exceed the sum of one hundred and eighty-four dollars and thirty-six cents ($184.36).

It is therefore ordered, adjudged, decreed that the temporary injunction herein, except so far as it effects the gas produced upon sections fifteen, twenty-two, twenty-seven, and thirty-four, Township Twenty-nine (29) north, Range Thirteen (13) east, in Washington County, state of Oklahoma, and the pipe line now used to convey said gas from said sections to the town of Caney, in the state of Kansas, in accordance with the stipulations and agreement in this case, be and the same is hereby made permanent; and the defendants, and each of them, their agents and employees, and all persons claiming under them, or acting under the direction or authority of them or either of them, be and they are hereby perpetually enjoined and restrained from piping, conveying or removing in any manner, gas from the state of Oklahoma, to any point or

points beyond and outside of the state of Oklahoma, and from connecting any other pipe line or lines used for conveying gas to or with said pipe line between the sections aforementioned and said Caney, Kansas; and the receivership herein be dismissed and the receiver be, and hereby is discharged.

And it is further ordered and decreed that the costs in this suit and the receivership be, and they hereby are taxed, at the
103 sum of three hundred sixty-eight dollars and seventy-two cents ($368.72) and that each of the parties hereto pay one-half thereof, for which let execution issue after fifteen days.

T. L. BROWN, *Judge.*

WASHINGTON COUNTY,
State of Oklahoma, ss:

I, John B. Churchill, Clerk of the District Court in and for the county aforesaid, do hereby certify the above and foregoing to be a full, true and complete copy of the decree in the case of the State of Oklahoma ex rel. Chas. West, Attorney General vs. Chas. Owen et al., as the same appears of record among the files of this office.

Witness my hand and the seal of said court this 13th day of April, 1908.

[SEAL.] JOHN B. CHURCHILL,
District Clerk.

104 EXHIBIT F.

In the District Court of the State of Oklahoma in and for Washington County.

THE STATE OF OKLAHOMA ex Rel. JOHN J. SHEA
v.
THE KANSAS NATURAL GAS COMPANY, THE WICHITA NATURAL GAS COMPANY, and Others, Names Unknown, Defendants.

Petition in Equity.

Comes now John J. Shea and states as a cause of action

1. That he is a citizen of, resident and tax payer of Washington County and state of Oklahoma.

2. That this action is brought for and in his own interest and for and on behalf of other citizens and tax payers of said Washington County, Oklahoma.

3. That the defendants, together with their agents, employees, servants and others whose names are unknown to this plaintiff are now engaged in laying a pipe line for the transportation of gas over, along, across and through the highways and roads of this county, without right or legal authority and without having obtained lawful right to lay and construct said line, and without having obtained lawful permission or right to construct and maintain the same.

4. That prior to the 16th day of November, 1907, no person, firm or corporation was permitted to maintain or construct a pipe line

for the transportation of gas in the Indian Territory until permission was first obtained from the Department of the Interior, but the defendants herein not having such permission, and without any right or lawful authority, are now proceeding to lay, construct and equip said gas line wrongfully and illegally.

105 5. That by the digging of the ditches and the laying of the line aforesaid the defendants are committing a nuisance and the building and maintenance of said gas line will be and continue a public nuisance and will be dangerous to the lives and health of the people of this county.

6. That the business of transporting gas through pipe lines is one of great danger owing to the heavy pressure caused by conveying quantities of gas through such lines and the public safety demands that gas lines be constructed under proper inspection and under the supervision of competent persons skilled in the business.

7. That said defendants are attempting to construct said line at this and in the manner set out in this petition for the purpose of avoiding inspection and for the further purpose of evading the laws of the state of Oklahoma governing corporations exercising the right of eminent domain.

8. That said defendants have not condemned or purchased a right of way for said pipe line and have not attempted to comply with the laws of the state governing the laying of pipe lines.

9. That defendants will, unless restrained by order of this court, proceed to lay, construct and maintain said gas line, to dig said ditches and cross the highways of this county, all to the great irreparable damage of this plaintiff and all other citizens of the said Washington County.

10. That defendants are at the present time laying said pipe line at or near Lot One, Section 13, Township 29, Range 13, in Washington County.

11. That plaintiff has no plan speedy or adequate remedy at law and has no remedy at law.

12. That the judge of this judicial district is at the present time absent from the County of Washington.

13. Wherefore, plaintiff prays that a temporary injunction issue from this court restraining the defendants, their agents, at-

106 torneys, employees workmen or others from continuing the construction of said gas line, and that all of the above named persons be enjoined from doing any act of any kind or character for the further building or construction of said gas line, the digging of any ditches or the doing of any further work upon said line. That upon final hearing this injunction be made perpetual, for such other and further relief as may be just and equitable in the premises and for costs.

JOHN J. SHEA.

STATE OF OKLAHOMA,
County of Washington, ss:

John J. Shea being first duly sworn states that I have read the above and foregoing petition and that based on information and belief the statements therein contained are true.

JOHN J. SHEA.

Subscribed and sworn to before me this 16th day of November, 1907.

____ ____,
County Judge.

107 EXHIBIT G.

In the District Court, Second Judicial District of the State of Oklahoma.

STATE OF OKLAHOMA,
County of Washington, ss:

THE STATE OF OKLAHOMA on the Relation of JOHN H. KANE, County Attorney of Washington County, State of Oklahoma, Plaintiff,

v.

THE KANSAS NATURAL GAS COMPANY, THE WICHITA NATURAL GAS Company, and Other Parties Whose Names are to Plaintiff Unknown, Defendant.

Petition.

Comes now the state of Oklahoma on the relation of John H. Kane, the duly elected, acting and qualified county attorney of the county of Washington, state of Oklahoma, and for its cause of action against the defendant alleges and says:

That the defendants, the Kansas Natural Gas Company, and The Wichita Natural Gas Company, are corporations organized under laws other than those of the state of Oklahoma.

That said corporations have never complied with the laws of the state of Oklahoma with relation to foreign corporations doing business within the state.

That said corporations have never, by the proper authority of the state of Oklahoma, been granted any right, privilege or immunities within the said state or the right to do business within said state in any manner or form.

That said defendants, together with their agents, employees, servants and others whose names are to this plaintiff unknown, are now laying a pipe line up to and across the domain of the state of Oklahoma, and that plaintiff is informed and believes that
108 said company intends and are about to attempt to extend said pipe lines, ditches and pipes across and over into the domain of the state of Oklahoma and through said domain to some point located within said state.

That the digging of said ditches and laying of said pipe and the construction of said pipe line will be completed over and across the highways of the state of Oklahoma and across the lands and property of citizens of the State of Oklahoma, and that the digging of said ditches and the laying of said pipe, and the construction of said pipe line over and across the highways of the state of Oklahoma and the lands of citizens thereof is being done without the purchase of any right of way over said highways of the condemnation by due process of law of the right of way over or through said highways and lands, and that the laying of said pipe line over said highways is an

interference with the right of easement in said highways held by the state of Oklahoma for the benefit of its citizens.

That the laying of said pipe line over and across the land of citizens of Oklahoma is an interference with the property rights of said parties in said land.

Further that the laying of said pipe line is a common nuisance for the reason that the business of transporting gas through pipe lines is one of great danger owing to the heavy pressure caused by conveying quantities of gas through such lines, and that the plaintiff is informed and verily believes that it is the intention of said defendants when said pipe line is constructed to conduct through said pipe line large quantities of natural gas and that said pipe line is being constructed for that purpose.

That the business of transporting gas is of such a nature that in order to properly protect the public health and safety pipe lines should be built under the rules and regulations of the proper authority of the state and under proper superintendence and inspection.

The said companies are, plaintiff verily believes, about to lay its pipe line without reference to the rules and regulations, in-
109 spection or superintendence of the proper officers of the state of Oklahoma.

That plaintiff verily believes that defendants will, unless restrained by the orders of this court, proceed to lay, construct and maintain said gas pipe line, dig said ditches and lay said pipe over and across the highways of this state and lands of the citizens thereof, and to maintain a common nuisance within the state of Oklahoma.

That the results accruing from the laying of said pipe line and the interference by said company through the laying of said pipe line with the rights of the state of Oklahoma and the citizens thereof cannot be properly compensated in damages.

That plaintiff has no speedy or adequate remedy at law, and has no remedy at law.

That the judge of this judicial district is at present absent from the county of Washington.

Wherefore, plaintiff prays that a temporary injunction issue from this court restraining the defendants and their agents, attorneys, workmen, employees or any others under their direction or control from continuing the construction of said gas line or from digging any ditch, laying any pipe or constructing any line whatsoever over and across the lands located in the state of Oklahoma, or over, through or across any highways of the state of Oklahoma, or from doing any act of any kind or character for the further building or construction of said line within the state of Oklahoma. And that upon final hearing this injunction may be made permanent, and for such other and further relief as may to the court seem meet and for the costs of this action.

JOHN H. KANE,
County Attorney.
By FRANK B. BURFORD
Deputy County Attorney and Special Attorney General
JOHN SHAY,
Special Attorney General.

110 COUNTY OF WASHINGTON,
State of Oklahoma, ss:

Frank B. Burford, Deputy County Attorney of Washington County, state of Oklahoma, being duly sworn states that he has read the above and foregoing petition and that the statements therein contained are true to the best of his knowledge and belief.

FRANK B. BURFORD.

Subscribed and sworn to before me this 18th day of November, 1907.

A. T. DUMENIL,
County Judge.

111 EXHIBIT H.

STATE OF OKLAHOMA,
County of Osage, ss:

STATE OF OKLAHOMA on the Relation of L. F. ROBERTS, County Attorney, Plaintiff.

v.

THE INDIAN TERRITORY ILLUMINATING OIL COMPANY (a Corporation), H. V. Foster, John H. Brennan, A. P. McBride, Kenneth K. McLaren, T. N. Barnsdall, Charles W. Willard, James A. Simmons, James S. Glenn, M. I. Duel, A. T. Fancher, and Mortimer F. Stillwell, Defendants.

Petition.

Plaintiff states that he is the duly elected, qualified and acting county attorney within and for Osage County, in the State of Oklahoma, that the defendant, the Indian Territory Illuminating Oil Company, is a foreign corporation organized and existing under the laws of the State of New Jersey; that the defendants M. V. Foster, James S. Glenn, John H. Brennan, A. P. McBride, Kenneth K. McLaren, Charles W. Willard, James A. Simmons, M. I. Duel and A. T. Fancher constitute its board of directors, and that the defendant Mortimer F. Stilwell is its secretary and treasurer; that the said defendant corporation has designated and appointed A. J. Biddison, late of the city of Pawnee, in Pawnee County, but now residing at the City of Tulsa, in Tulsa County, in said State, as its agent upon whom service of process may be made in any action in which said corporation may be a party, and has stipulated and agreed in writing duly filed in the office of the Secretary of State, that service upon such agent shall be taken and held as due service upon such corporation.

112 That said defendant, the Indian Territory Illuminating Oil Company, and each of the other defendants, officers and directors of said Indian Territory Illuminating Oil Company, each acting in his official representative and personal capacity, are doing and have done, and are permitting and have permitted, to be done

acts which amount to a forfeiture of their rights and privileges as a corporation, and their personal rights as the representatives of such corporation, and have exercised and are exercising powers not conferred by law upon such corporation, and are doing and permitting things to be done by said corporation, and its agents and representatives which are prohibited by law in the following particulars, to-wit:

I. That the said defendant corporation, and its officers and directors as such, are engaged in the business of transporting and transmitting natural gas by means of pipe lines between various points within this state, and more particularly between points in Osage and Washington counties in this state, and is owning, maintaining and operating more than sixty miles of gas pipe lines for that purpose in said counties.

II. That said defendant corporation acting by and through its officers, directors, agents, servants and employees, and more particularly through the defendant T. N. Barnsdall, as well as through divers other persons to this plaintiff unknown, is now negotiating and seeking contract with divers municipal corporations and persons outside of the state of Oklahoma, for the purpose and with the intent of extending its gas pipe lines along, over, under, across or through the highways, roads bridges streets and alleys in this state and in several counties, cities, towns and municipalities thereof, and to points outside of and beyond the boundaries of this state, and in so doing to exercise the right of eminent domain without authority of law, and to use, occupy and obstruct said highways, roads,
113 bridges, streets and alleys in this state without authority of law for the purpose of transporting or transmitting natural gas between different points within the state and to points outside of and beyond the state all of which said defendant corporation, its officers, directors and employees, including said defendant Barnsdall and said unknown persons, are now threatening and attempting to do without any right, license or authority from the state of Oklahoma.

III. That prior to the 16th day of November, A. D. 1907, the said defendant corporation acquired and owned and now owns and controls a certain leasehold interest in and to six hundred and eighty thousand acres of land in Osage County, State of Oklahoma, and acquired said leasehold interest for the exclusive purpose of mining and prospecting for mining for oil and gas and for no other purpose; that in violation of the constitution and laws of this state, said defendant corporation has engaged in and is now engaged in trading, dealing in and sub-letting said leasehold interest to certain other persons, firms and corporations, whose names are to this plaintiff at this time unknown. That the defendant corporation has never mined or prospected, and is not now mining or prospecting for oil and gas as provided for in its lease contract, but that the same is being wholly done and carried on by its said sub-lessees. That the said defendant corporation withholds from its said lessees all the gas produced from said leased premises, and retains the same as its own property, and has charged and is now charging its said sub-lessees royalties and bonusses for the privilege of mining and prospecting for oil and gas

under and by virtue of their lease contracts with said defendant corporation.

IV. Plaintiff further states that the defendant Indian Territory Illuminating Oil Company is a subsidiary to, a branch of and controlled by the Standard Oil Company, a corporation organized under and by virtue of the laws of the state of New Jersey, which
114 now has and for many years past has had, by virtue of owning the controlling interest in numerous subsidiary corporations, associations and companies, a virtual monopoly in the production, transportation, refining, handling and sale of petroleum and natural gas throughout the United States; that the control of said defendant, Indian Territory Illuminating Oil Company by the Standard Oil Company is exercised through the defendants, T. N. Barnsdall, James S. Glenn, H. V. Foster, A. P. McBride, Charles W. Willard, James A. Simmons and M. I. Duel, directors of the defendant Company who are agents and representatives of said Standard Oil Company. That the said defendant, Indian Territory Illuminating Oil Company has entered into a combination and agreement with said Standard Oil Company and with the said T. N. Barnsdall and his co-defendants representatives of said Standard Oil Company, and with divers other persons to plaintiff unknown, for the purpose of enabling said Standard Oil Company to monopolize and control the entire production of natural gas in the State of Oklahoma for the purpose, with the intent and effect of illegally restraining trade and commerce within this state; that in pursuance of said agreement, understanding and purpose said defendant Corporation has in all of its sub-leasing contracts on said six hundred and eighty thousand acres of Osage lands, more than three hundred and fifty in number, (saving and excepting only its sub-lease to the Pawhuska Oil & Gas Company) reserved to itself all of the natural gas found or produced on said leasehold premises, and has refused and now refuses to permit any of its said sub-lessees (saving and excepting only said Pawhuska Company) to dispose of, sell or utilize for commercial purposes any of the natural gas produced thereon; that in further pursuance of said combination and agreement between said defendant, Corporation, Standard Oil Company, said Barnsdall and others, said defendant Company has transferred and assigned and has contracted to transfer and assign to said Barnsdall all of the gas produced
115 from its said leasehold on the said six hundred and eighty thousand acres of Osage lands. That in further pursuance of said combination, agreement and purpose, said Barnsdall, together with his co-defendants, and said other persons to plaintiff unknown, have procured and now own and control leases for the entire production of natural gas on approximately five hundred thousand acres of lands in that part of the state of Oklahoma lying adjacent to said six hundred and eighty thousand acre tract in Osage County; that said last mentioned lands together with that covered by said six hundred and eighty thousand acre lease in Osage County comprise all the lands producing natural gas in the state of Oklahoma. That said several acts, agreements, contracts and combinations are in re-

straint of trade or commerce within this state, and are against public policy and illegal.

Wherefore, plaintiff prays the judgment of this Honorable Court that said defendant, the Indian Territory Illuminating Oil Company, be ousted from doing business within the State of Oklahoma; that it be enjoined and restrained from conducting, carrying on and exercising any corporate franchise whatsoever within this state and that the said individual defendants and each of them be restrained and enjoined from acting or assuming to act in any corporate capacity in said State; that forfeiture be adjudged of all the property, effects and franchises of said Corporation to the state; that said defendant Corporation, the Indian Territory Illuminating Oil Co., its various officers, directors, agents, servants and employees be enjoined and restrained during the pendency of this action from construction, laying, building or acquiring any pipe line for the transportation of natural gas into, through, along, over or under any public highway, road, bridge, street or alley in this state, and that they be further enjoined from transporting or transmitting natural gas between points within this state; that said defendants and each of them be further restrained from conducting, carrying on and main-
116 taining its said monopoly, combination and agreement in restraint of trade and commerce against public policy in the use and production of natural gas within the state, and that it be restrained and enjoined from disposing of, encumbering and hypothecating any of its properties or assets until all fines, penalties and forfeitures adjudged or found to be due to the state shall have been duly satisfied and discharged; and plaintiff prays for such other and further orders, judgments and decrees in the premises as may be proper.

L. P. ROBERTS,
County Attorney of Osage County.
T. J. LEAHY,
ORVILLE T. SMITH,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Osage County, ss:

L. I. Roberts, County Attorney, upon oath says upon information and belief, that the matters and things set forth in the above and foregoing petition are true.

L. F. ROBERTS.

Subscribed and sworn to before me this 1st day of December, 1908.

S. R. CRISWELL,
Notary Public, Osage County, Okla.
Com. Ex. Apr. 20, 1912.

117 Endorsed: 857. The Marmet Mining Company v. Charles N. Haskell, Charles West, John J. Shea, John H. Kane, Frank B. Burford, J. E. Love, J. J. McAlester, J. E. Watson and Pete Hanraty. Bill of complaint. Filed Feb. 2, 1909. L. G.

Disney, Clerk U. S. Circuit Court Eastern District Oklahoma John J. Jones, Eugene Mackey. Mackey & Scully, Columbia Bank Building.

118 United States Circuit Court, Eastern District of Oklahoma.

In Equity. 858.

A. W. LEWIS, a Citizen and Resident of the State of Ohio, Plaintiff,

v.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, J. J. McAlister and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

To the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Oklahoma:

A. W. Lewis, a citizen and resident of the state of Ohio, brings this, his bill of complaint, against Charles N. Haskell, a citizen of the state of Oklahoma and a resident of the county of Muskogee therein; and Charles West, a citizen of the state of Oklahoma and a resident
119 of the county of Garfield therein; and John J. Shea, John H. Kane and Frank B. Burford, citizens of the state of Oklahoma and residents of the county of Washington therein; and J. E. Love, J. J. McAlister and A. P. Watson, citizens of the state of Oklahoma and residents respectively of the counties of Woodward, Pittsburg and Pottawatomie therein; and Pete Hanraty, a citizen of the state of Oklahoma and a resident of the county of Pittsburg therein; and thereupon

Your orator complains and says:

First. That he is and was during all the times hereinafter mentioned a citizen of the State of Ohio and a resident thereof.

Second. That Charles N. Haskell, one of the respondents, is the duly elected, qualified and acting Governor of the State of Oklahoma and a citizen of that state, and a resident of the county of Muskogee therein; that Charles West, another of the respondents, is the duly elected, qualified and acting Attorney General of the state of Oklahoma and a citizen of that state and a resident of the county of Garfield therein; that John J. Shea, another of the respondents, is the duly appointed, qualified and acting Deputy or Special Attorney General of the state of Oklahoma, and a citizen of that state and a resident of the county of Washington therein; that John H. Kane, another of the respondents, is the duly elected, qualified and acting

County Attorney of Washington County, Oklahoma, and a citizen of that state and a resident of the said county of Washington; that Frank B. Burford, another of the respondents, is the duly appointed, qualified and acting Deputy County Attorney of Washington county, Oklahoma, and a citizen of that state and a resident of that
120 county; that J. E. Love, J. J. McAlister and A. P. Watson, others of the respondents, are the duly elected, qualified and acting Corporation Commissioners of the state of Oklahoma and citizens of that state and residents respectively of the counties of Woodward, Pittsburg and Pottawatomie therein; that Pete Hanraty, another of the respondents, is the duly elected, qualified and acting Mine Inspector of the state of Oklahoma, and a citizen of that state and a resident of the county of Pittsburg therein.

Third. That in, under and beneath the surface of large tracts of land in the state of Oklahoma, and particularly in the county of Washington therein, natural gas has been discovered, and for more than four years last past has been known to exist in large quantities and of great value for use in the production of light, heat and power, and for all other purposes for which it is adapted or can be used, and during such time has attracted the attention of persons having capital and desirous of investing the same in mining and drilling for, procuring, utilizing and otherwise disposing of such natural gas for the purposes hereinbefore set forth, and that since such discovery of gas as aforesaid and in the counties of Washington, Tulsa, Wagoner, Muskogee, Creek, Nowata, Craig, Mayes, Rogers and Okmulgee, Oklahoma, and particularly in the said county of Washington, a very large number of natural gas wells have been drilled and equipped, in the drilling of which and in the locating and developing of the said gas fields large sums of money, aggregating over a million dollars, have been expended, and large numbers of laborers, both skilled and unskilled, have been and now are actively employed.

Fourth. That the work of so drilling for natural gas in the said gas fields of Oklahoma has progressed until there has now been drilled about four hundred gas wells, which are capable of
121 producing and furnishing over one billion five hundred million cubic feet of gas per day of twenty-four hours; that such of the said gas wells as are now being used have been capped and shut in and the gas therefrom preserved for sale and consumption; that all cities in and near the said belt in which the said gas is found have been supplied with gas distributing plants, and transportation lines have been laid from the said wells in the said field to the said distributing plants, and by and through the same all persons in the said cities desiring to use the said gas for light, heat or power or for any of the purposes for which it may be utilized, are now being fully supplied. Yet your orator charges that notwithstanding the full use of natural gas in the said cities of Oklahoma, for whatever consumption the same may be put, and by all who may desire to use it, the total consumption does not and will not exceed more than fifty million cubic feet of gas per day of twenty-four hours, leaving a very large surplus of gas over and above all demands therefor in the said state, and that there is now in the said gas field wells drilled, completed

and ready for immediate use, but shut in and not used by reason of the production of gas in the said belt far exceeding the demand therefor, the combined production of which will exceed one billion five hundred million cubic feet per day of twenty-four hours, and that there is in the said county of Washington alone so shut in and not used by reason of the production exceeding the local demand over one hundred and fifty wells capable of producing and delivering seven hundred and fifty million cubic feet per day of twenty-four hours.

Fifth. Your orator further charges and states the fact to be that the cities of St. Joseph, Kansas City, Joplin, Carthage and other cities in the state of Missouri, and the cities of Wichita, Hutchinson, Winfield, Arkansas City, Topeka, Lawrence, Leavenworth, Atchison, Kansas City, Ottawa, Independence, Caney and other cities in the
122 state of Kansas have in them natural gas distributing plants through which natural gas can be distributed, delivered and sold to persons desiring to use the same for light, heat, fuel, power and the other purposes and uses to which the same may be put; that these distributing plants have been built and constructed at great cost and expense; that in many of the said cities, notably St. Joseph, the two Kansas Cities, Wichita, Hutchinson, Winfield, Arkansas City, Topeka, Lawrence, Leavenworth, Atchison and Ottawa there existed for many years manufactured gas generating and distributing plants, which upon the construction of the gas trunk pipe lines about to be referred to, were replaced or supplanted by the said natural gas distributing plants, such of the manufactured gas mains and pipes as were available and could be used for such purposes being incorporated into and made a part of such natural gas distributing plants; and so much of the generating plants and the manufactured gas mains and lines as were not used in such natural gas plants were either torn up, dismantled or the use of the same wholly discontinued so that now no manufactured gas is sold in the said cities, and the fact is that all of the inhabitants thereof are now wholly dependent upon the use of natural gas for light, heat, fuel, power and the other purposes to which the same can and is being put (except only the limited extent to which steam, electricity and coal may or can be used; and that the Wichita Natural Gas Company and the Kansas Natural Gas Company have at great cost and expense, amounting to many millions of dollars, laid, built and constructed from the said cities to or near to the state line dividing the states of Kansas and Oklahoma, large trunk pipe lines for the transportation of natural gas to the said cities for distribution, sale and use therein; that the transportation to and the distribution, sale and use of natural gas in the said cities has been conducted and carried on for several years last past until the inhabitants and consumers thereof in the said cities now rely
123 almost wholly upon the use of natural gas for light, heat, fuel, power and other purposes, and there has grown up and now is in the said cities a great and heavy demand and market for natural gas, which is daily growing larger as the people of the said cities become more accustomed to the use and luxury thereof; that such demand has now grown to such extensive proportions that in

many of the said cities, especially the two Kansas Cities, St. Joseph, Topeka, Hutchinson and Wichita, the local distributing companies supplying the same and securing their gas supply from the said gas trunk pipe lines are unable to meet the increasing demand, and there has been and now is a shortage of natural gas therein, and your orator charges that if O. D. Bleakley and the Kansas Natural Gas Company be permitted to construct their line hereinafter referred to, the gas which he will transport through the same will largely meet and supply such shortage.

Sixth. Your orator avers and charges that the said Kansas Natural Gas Company and the said Wichita Natural Gas Company are in the market for and are willing to take and buy large quantities of natural gas for transportation by them to the several cities of Kansas and Missouri along their respective lines and supplied by them with natural gas and there to be distributed, sold and used.

Seventh. Your orator avers and states the fact to be that by reason of the demand for natural gas in the states of Kansas and Missouri and the very large overproduction thereof in the state of Oklahoma, a production, as shown above, far exceeding the demand therefor, there is a great and growing need and demand for a gas pipe line for the transportation of natural gas from the owners and shippers thereof in the state of Oklahoma to their consignees, purchasers and consumers thereof in the states of Kansas and Missouri, and that
124 such a pipe line would not only be a paying investment, but also meet a great public want and perform a great public service.

Eighth. Your orator avers that he is informed and believes that one O. D. Bleakley, of Franklin, Pennsylvania, proposes to lay, build and construct a pipe line from points in Washington County, Oklahoma, northwardly and northwestwardly to and across the line dividing the states of Kansas and Oklahoma and into the state of Kansas, the same to be used by him and such parties as he may hereafter associate with himself, wholly and solely for the transportation and carriage of natural gas between the states of Oklahoma and Kansas, and not in any way for local traffic in the state of Oklahoma, and your orator is informed and believes that to that end he, the said O. D. Bleakley, heretofore applied to the Honorable Secretary of the Interior for a right of way over the lands of Indians in Washington County, Oklahoma, through which his said proposed gas pipe line would run, and that on June 2, 1908, the Honorable James Rudolph Garfield, Secretary of the Interior of the United States, through his Assistant in office, Jesse E. Wilson, and by virtue of the power vested in him and his office by the Government of these United States so to do, did grant unto the said O. D. Bleakley a right of way along and over the following route:

Beginning at a point in the line dividing the states of Kansas and Oklahoma nine hundred feet east of the north east corner of Section Sixteen and the northwest corner of Section Fifteen in Township Twenty-nine north, Range Thirteen east; and thence running in a southeasterly direction crossing Sections Fifteen and Twenty-two in Township Twenty-nine north, Range Thirteen east,

into Section Twenty-seven, Township Twenty-nine north, Range Thirteen east, to a point near the northwest corner of the Southeast Quarter of the Northeast Quarter thereof; and thence south
125 out of Section Twenty-seven and through Section Thirty-four in Township Twenty-nine north, Range Thirteen east, and through Section Two in Township Twenty-eight north, Range Thirteen east, into Section Eleven, in Township Twenty-eight north, Range Thirteen east, to the center of the east half thereof, the line running near the section line between Sections One and Two in Sections Eleven and Twelve; also one lateral running from the aforementioned line in an easterly direction six hundred and sixty feet into the west half of Section One; and two other laterals therefrom running in a westerly direction twenty-four hundred and fifty feet in Section Two, and two other laterals therefrom running in a westerly direction twenty-four hundred and fifty feet in Section Eleven, a total distance of seven and two-fifths miles.

Your orator is further informed and believes that such right of way was so granted to the said O. D. Bleakley on the condition that he should, in accordance with the laws of the United States and the rules and regulations of the Interior department, pay to the Indian Agent the value of such right of way and the damages which the several owners of lands over which the same would pass would sustain from the laying, building and maintenance of the said line.

Ninth. Your orator further avers that upon information and belief that the said O. D. Bleakley upon granting to him of the said right of way did pay to the Indian Agent at Muskogee, Oklahoma, in accordance with and in full compliance with the laws of the United States and the rules and regulations of the Interior Department, the sum of four hundred and fifty-six dollars and seventy-six cents, to be paid by such agent to the several Indian owners of the lands over which the said pipe line would pass, for the purpose of recompensing them for the value of such right of way and the damages which they would sustain from the laying, building
126 and maintenance of his said line; the said sum being the fair and full value of such right of way and the fair and full amount of such damages.

Tenth. Your orator on information and belief avers that the said O. D. Bleakley proposes to and will lay, construct and extend his said gas pipe line from the southerly terminus thereof to or near to the piece of land under lease to your orator as described in the twelfth paragraph hereof, as soon as he, the said Bleakley, can secure rights of way for the construction of the southerly extension of his said line.

Eleventh. Your orator on information and belief avers that the said Kansas Natural Gas Company, a corporation of Delaware, has determined to and now proposes to extend its said gas trunk pipe line and lay, build and construct the same to and across the line dividing the states of Kansas and Oklahoma at a point therein near the northeast corner of Section Sixteen, Township Twenty-nine, Range Thirteen, in Washington County, Oklahoma, and running thence southwestwardly to a gas well drilled on the northeast quarter

of the northeast quarter of the northeast quarter of the said section, with the owner of which well the said company holds a contract giving it the right to purchase the gas therefrom. Your orator is also informed and believes, and hence avers and declares that the said Kansas Natural Gas Company proposes to and will, as fast as it can secure rights of way, extend its said gas line from the said gas well farther into the state of Oklahoma into the neighborhood of the land under lease to your orator and described in the twelfth paragraph hereof, with gathering lines to the several gas wells from which it may and will buy and take gas, including that of your orator, and that it, the said Kansas Natural Gas Company, as well as he, the said O. D. Bleakley, will purchase from your orator
127 and receive into their respective lines the gas from the wells now or hereafter to be drilled by your orator on the piece of land under lease to him as described in the following paragraph, and to that end the said Kansas Natural Gas Company and your orator did heretofore, in the city of Pittsburgh, Pennsylvania, enter into a certain written contract whereby your orator did agree to sell and deliver and the company agree to buy and take into its said proposed pipe line, all the dry merchantable gas from the well now drilled on the said piece of land. A true and exact copy of the said contract is hereto attached, marked "Exhibit A" and made a part hereof as fully as though inserted at length herein. Your orator further says that natural gas has become and now is a widely known and well established article of interstate commerce and the traffic therein between states has grown to enormous proportions, immense quantities thereof, aggregating each day hundreds of millions of cubic feet, being transported from Canada into New York, from Pennsylvania into New York, and also into Ohio, from West Virginia into Pennsylvania and also into Ohio, from Kansas into Missouri, the cities of Kansas City, Joplin, Carthage and St. Joseph, Missouri, being supplied wholly with gas piped from Kansas, the city of Buffalo, New York, wholly with gas piped from Canada and Pennsylvania, the city of Jamestown, New York, wholly with gas piped from Pennsylvania, the city of Pittsburgh, Pennsylvania, almost entirely with gas piped from West Virginia, the cities of Cleveland and Toledo, Ohio, almost entirely with gas piped from West Virginia, and pipe lines are now about to be constructed, as your orator is informed and believes, by which gas will be piped from West Virginia to the cities of Baltimore, Maryland, and Washington, D. C.

Twelfth. Your orator avers and states the fact to be that he is the owner of a certain oil and gas mining lease made to him by
128 Stephen B. Tehee, dated May 12, 1905, for a term of fifteen years from the date thereof, the leasehold in which is situate in Washington County, Oklahoma, and described as follows: The West Half of the Southeast Quarter of Section Sixteen, Township Twenty-six, Range Thirteen, and containing eighty acres. That your orator, at the expense of several thousand dollars, has drilled upon the said leasehold one large gas well capable of producing many million cubic feet of gas per day; that he has been forced to

shut in and cap the said well, as he is unable to sell, market or dispose of the gas therefrom because of the great over-production of natural gas in Washington County, Oklahoma, as hereinbefore described.

Thirteenth. Your orator further avers and charges that the transportation of natural gas by means of and through pipe lines is and has been for the past twenty-five years extensively carried on in the Dominion of Canada, the states of New York, Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Missouri, Kansas, Oklahoma, Texas, Arkansas, Louisiana and other states in the United States, and that there are now over five thousand miles of transportation gas lines laid and operated in the said states and Canada, and transportation of gas by means thereof has grown to and is now a great industry or business, with millions of dollars invested therein, and has become and now is the universal method of transporting natural gas and, in fact, is now the only known method of carrying and transporting natural gas. That the said lines in Canada and the said states are laid along and across roads, streets and other public highways without hindrance, damage or danger, and, except in very rare instances and then easily remedied, without inconvenience to the traveling public or to the abutting property owners.

Fourteenth. That there is now laid, maintained and oper-
129 ated in the state of Oklahoma about five hundred miles of natural gas pipe lines and daily in use for the transportation and carriage of natural gas both within and out of the state; that the said lines in very many instances and often at great lengths run over, along and across public highways of the state, and are now maintained and operated for the transportation and carriage of natural gas at great and high pressure therein, and wholly without hurt, hindrance, damage or inconvenience to the traveling public or the abutting property owners, and are so laid, maintained and operated by and with the knowledge and consent of the respondents herein.

Fifteenth. Your orator, upon information and belief, avers that the gas pipe lines which the said O. D. Bleakley and the Kansas Natural Gas Company propose to construct will not be laid by them along any public highway in the state of Oklahoma, but must necessarily be laid over and across certain highways in the line of its route; but that wherever the said lines are laid across any public highway the said O. D. Bleakley and the Kansas Natural Gas Company propose to and will lay them at such depth and in such a manner as not to interfere with or endanger or incommode the public travel, and in the same and identical manner as natural gas lines are now laid, maintained and operated over public highways of the state of Oklahoma. He further avers and declares, upon information and belief, that the said gas pipe line will be laid of steel pipe tested at a pressure of seven hundred and fifty pounds to the square inch, and will be laid with rubber packer couplings of the latest design, and so built and constructed as to absolutely prevent the leakage of gas therefrom; and that the pressure which the said O. D. Bleakley and the Kansas Natural Gas Company will maintain

upon their said lines for the transportation and carriage of gas through the same will not exceed three hundred pounds to the square inch.

130 Sixteenth. That, as your orator is advised, informed and believes, each of the defendants herein is, by virtue of his said office and of the Constitution and laws of the state of Oklahoma, clothed with some power and authority and charged with some duty in the execution and enforcement of the laws of that state and in the protection of public rights, and particularly in respect to the execution and enforcement of the provisions of Chapter 67 of the Session Laws of that state enacted in 1907-1908, hereinafter referred to, and that, as such officers or otherwise, they have assumed and undertaken to execute and enforce said act both by actions and proceedings in the Courts of the state and by force and arms, as hereinafter set forth.

That it is the avowed purpose and intent of the defendants, and each and every of them, to prevent the transportation of natural gas produced in Oklahoma beyond the limits of that state, and to that end your orator charges and states the facts to be:

(*a*) That they have caused to be passed by the Legislature of the state of Oklahoma, among other laws and statutes, a certain act, law or statute known and designated as Chapter 67 of the Session Laws of 1907-1908 of the state of Oklahoma, entitled, "An Act regulating the laying, constructing and maintaining and operation of gas pipe lines for the transportation of natural gas within the state of Oklahoma, defining the modes of procedure for the exercise of the right of eminent domain for such purposes, providing for the inspection and supervision of the laying of such pipe lines and limiting the gas pressure therein, and providing penalties for the violation thereof," which provides that the transportation of natural gas shall not be engaged in or carried on by foreign corporations; that no person, individual, association or partnership shall be engaged in the

131 transportation of gas within that state; that the transportation of natural gas shall be conducted and carried on only by corporations created and organized under the laws of that state; that if any corporation created under the laws of the state of Oklahoma shall attempt to transport gas beyond the borders thereof the charter of such corporation shall immediately terminate and be revoked, and a receiver for the company be appointed and the property of the corporation of every nature and kind be escheated and forfeited to the state. And your orator avers and charges that this act was passed solely and only for the purpose of preventing the transportation of natural gas beyond the borders of the state, and that it is wholly illegal and void because it conflicts with, offends against and is in contravention of clause 3 of Section 8 of Article I of the Constitution of the United States granting to Congress the power to regulate commerce between the states, in that it is an absolute inhibition upon the exportation of an article of commerce; and of the XIVth Amendment of the Constitution of the United States in that it abridges the privileges and immunities of your orator, a citizen of the United States, and deprives him of his property with-

out due process of law, and denies to him the equal protection of the laws; and of Section 10 of Article I of the Constitution of the United States in that it impairs the obligation of your orator's contracts; and of Section 57 of Article V of the Constitution of Oklahoma in that it embraces more than one subject, none of which are clearly expressed in its title, and the said act is neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes; and of Section 24 of Article II of the Constitution of Oklahoma in that it deprives your orator of his private property without just compensation; and of Section 32 of Article II of the Constitution of Oklahoma in that it creates a monopoly contrary to the genius of free government. Your orator attaches
132 hereto a true, exact and correct copy of the said law or statute, marks the same "Exhibit B," and makes the same a part hereof as fully as though incorporated at length herein.

(*b*) That they have with force and violence, and against the rights of the owners thereof and in violation of the laws and Constitution of the United States, seized a gas pipe line in course of construction across the line dividing the states of Oklahoma and Kansas, and which was to be used wholly and solely for interstate carriage and transportation of gas, and torn the same up and thrown the pipe and material of which it was being constructed back upon the Kansas side of said state line.

(*c*) That, as your orator is informed and believes, they have caused the line dividing the states of Kansas and Oklahoma to be patrolled on the Oklahoma side thereof with armed guards ordered and instructed by them to resist with force and arms the laying and building of any gas pipe line across the said state line, and to prevent with force and violence the building of any such line, and if necessary to that end to tear up and destroy the same.

(*d*) That they have caused a pipe line constructed before the state of Oklahoma was created and used wholly in the transportation and carriage of natural gas from Oklahoma into Kansas to be thrown into the hands of a receiver; that this was done by and through an action commenced in the courts of Washington County, Oklahoma, by the filing therein of a petition so cunningly, wickedly and fraudulently drawn as to conceal the fact that the said line was engaged in interstate commerce and wholly beyond the jurisdiction or control of the state of Oklahoma or any of its courts or authorities, a true copy of which petition is hereto attached, marked "Exhibit C" and made a part hereof as fully as though in-
133 corporated at length herein; that when the said suit or action was upon the petition of the defendants therein removed into this court the same was, upon the motion of the defendants herein and at their suggestion that no federal question appeared upon the face of the petition, and against the protests of the defendants named therein, remanded to the said courts of Washington County, Oklahoma; that the defendants herein secured the appointment of the said receiver at Chambers without notice of such proceedings to the owners of said pipe line, the defendants therein, and requiring the said receiver to give bond in the penal sum of only two thousand

dollars, when in truth and fact, as your orator is informed and believes, the value of the property of the defendants therein so passing into the custody and control of the receiver was not less than four hundred thousand dollars; that after the said case was remanded to the said courts of Washington County the defendants, there being threatened by vexatious delays and adverse decisions in the said court and unable to continue the litigation to the Supreme Court of the United States, were forced to and did consent to a decree in the said court, a copy of which is hereto attached, marked "Exhibit D" and made a part hereof as fully as though incorporated at length herein; that as will appear from the said petition the ground upon which the said pipe line was so placed in the hands of such receiver was that it was a common nuisance, a menace to society, when in truth and fact the pipe line was laid and constructed in the very best of good workmanship and skill, and was maintained and operated in good order and condition and a high state of efficiency, and both where it was laid over, across and along public highways as well as where it ran across public lands, was free from leaks and without menace, danger or inconvenience to the traveling public or to the owners of the land over which it passed, and that while the line was in the possession and control of the said receiver
134 and at the time of entering the said decree and ever since it was operated and maintained, and at the present time is operated and maintained in the same order, condition and manner and high efficiency as it was at the time the said petition was filed charging it with being a common nuisance and menace.

(e) That the defendants have also caused certain other suits to be entered and instituted in the courts of Washington County, Oklahoma, against the Kansas Natural Gas Company and the Wichita Natural Gas Company, certain corporations foreign to the state of Oklahoma, charging them with violating the laws of Oklahoma and seeking to enjoin them from building their lines in the state of Oklahoma, and by *praecipe* at Chambers, granted without notice to the defendants therein or any service having ever been made upon them or their voluntary appearance, have secured injunctions against the said defendants without their having ever been in the state of Oklahoma or having ever done any business therein or had any property; that the petitions in the said suits were attempted to be drawn so cunningly as to conceal the federal question involved therein and so prevent a removal of the suits into this court, and so compel the defendants therein to submit to vexatious delays and adverse decisions in the courts of Oklahoma, and prevent as long as possible the appeal of the cases to the Supreme Court of the United States. Your orator attaches hereto true, exact and correct copies of the petitions in the said suits, marks them "Exhibit E" and "Exhibit F," respectively, and makes them parts of this bill of complaint as fully as though incorporated at length herein.

(f) That the defendants have also caused a certain other suit to be instituted in the courts of Osage County, Oklahoma,
135 against (joining also certain of its officers as defendants) The Indian Territory Illuminating Oil Company, a cor-

poration of the state of New Jersey, and lawfully authorized and empowered to engage in the mining for, piping, transportation and marketing of natural gas in the Indian Territory long before Oklahoma became a state, charging the defendant with violating the laws of Oklahoma, of seeking to oust the said corporation from the state of Oklahoma, confiscate its property and restrain and enjoin it from transporting and carrying natural gas, when in truth and fact, as your orator is informed and believes, the real and true object of the said suit is to prevent the piping and carriage of natural gas by the said corporation beyond the borders of the state of Oklahoma. Your orator attaches hereto a true, exact and correct copy of the petition in the said suit, marks the same "Exhibit G" and makes the same a part hereof as fully as though incorporated at length herein.

Seventeenth. That as your orator is informed and believes, the defendants threaten and it is their purpose to tear up and destroy by force and violence any gas pipe line transporting and piping natural gas out of and from the state of Oklahoma, including the proposed line of the said O. D. Bleakley and the Kansas Natural Gas Company, and to prevent by force and violence and in trespass upon your orator's property and rights the construction and operation of such lines; that they also threaten and it is also their purpose to institute by virtue of the said act, law or statute of Oklahoma suits in the courts of Washington County and elsewhere in Oklahoma against all persons, firms or corporations, including therein the said O. D. Bleakley and the Kansas Natural Gas Company, to restrain and prevent the construction and operation of all lines to be used in the transportation and carriage of gas out of and from the state of Oklahoma; that they also threaten and it is also their purpose to

136 so cunningly prepare and draw the petitions in such proposed suits that they will conceal and not disclose the fact that the pipe lines, the construction of which they threaten to prevent, are engaged wholly and solely in the interstate transportation and carriage of natural gas, and so prevent a removal of the same into the federal courts, and thus attempt to submit the said O. D. Bleakley and the Kansas Natural Gas Company and others so proposing to construct interstate lines to vexatious delays and adverse decisions in the courts of the state of Oklahoma, and prevent as long as possible any appeal therein to the Supreme Court of the United States.

Eighteenth. That even while the defendants were engaged in the wrongful and unlawful acts and doings hereinbefore mentioned and recited and committed for the purpose of preventing the construction and operation of any gas line used for piping and transporting natural gas out of and from the state of Oklahoma, the defendants were permitting the operation of gas pipe lines from the states of Kansas and Arkansas into the state of Oklahoma, and the citizens of Oklahoma were enjoying the benefits of gas so transported into Oklahoma from the states of Arkansas and Kansas notably at or near Arkansas City, Arkansas, and Fort Smith, Arkansas.

Nineteenth. That your orator's rights in his said oil and gas lease

and in the well now drilled thereon, and in the natural gas which can be produced therefrom are of great value; that the drilling and equipping of the said well, together with the rentals paid by him under the terms of the lease to keep the same from forfeiture and which he was by the lease obligated to make, alone cost your orator more than two thousand dollars, exclusive of interest; that the lease itself with the natural gas which he can produce and market if the said lines are constructed and your orator is permitted
137 without hindrance from the respondents to market and sell the gas therefrom for transportation to Kansas and Missouri and Oklahoma, will be of great value, far in excess of two thousand dollars, exclusive of interest; but all of which, if defendants are permitted to continue their wrongful and illegal acts and deeds herein complained of, will be wholly lost to your orator, thus causing your orator great and irreparable loss, damage and injury in that the said acts and deeds are destroying all market for your orator's supply of natural gas and rendering the same wholly valueless, whereas in truth and fact were the defendants to cease their said unlawful acts and deeds and allow the said gas pipe lines to be laid and built your orator would have a ready market and sale for all the natural gas which he can produce from the said leasehold, including both the well now drilled as well as the ones which your orator may hereafter drill thereon and elsewhere in Oklahoma, and the same would immediately become of great value to him; and that the amount of such direct loss, damage and injury to your orator is already more than two thousand dollars, exclusive of interest and costs, and, as your orator fully believes, if such wrongful acts and deeds of the defendants are continued, will amount to many more thousands of dollars.

Twentieth. Your orator further avers and states the fact to be that the natural gas which he will market and sell from his said lease, if the said lines are laid and constructed, is produced and mined from lands owned by an Indian, placed by the laws of the United States under the authority, dominion and control of the Secretary of the Interior, and under a lease to mine and produce natural gas therefrom made by the said Indian by and with the approval and consent of the Secretary of the Interior while the Indian Territory still existed and long before the state of Oklahoma was created.

138 Wherefore your orator charges:

1. That such act, law or statute of Oklahoma hereto attached and marked "Exhibit B," as well as all laws of that state so far as it is attempted to apply them to persons, firms or corporations engaged, like the said O. D. Bleakley and the Kansas Natural Gas Company, wholly and only in the interstate carriage and piping of natural gas, are absolutely unconstitutional and utterly null and void and without any force and effect whatever, because by the provisions of the Constitution of the United States, hereinbefore referred to, the state of Oklahoma and all its officers, and each and every citizen thereof, including the respondents herein, have no power, authority, dominion, control or jurisdiction over persons, firms or corporations engaged, like the said O. D. Bleakley and the Kansas Natural Gas

Company, wholly and solely in the transportation and carriage of natural gas between states, such persons, firms or corporations so engaged being wholly within the control, regulation, power, authority, jurisdiction and protection of the laws and Constitution and courts and government of the United States of America, and no other.

2. That such act, law or statute of Oklahoma hereto attached and marked "Exhibit B," embracing as it does more than one subject, no one of which are clearly expressed in its title (being neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes) infringes upon the provisions of the Constitution of Oklahoma as hereinbefore referred to, is absolutely unconstitutional and wholly null and void.

3. That, any attempt by the defendants to carry out their said threats to tear up and destroy the proposed pipe lines of the
139 said O. D. Bleakley and the Kansas Natural Gas Company, or to annoy and harass them with such threatened suits in the state courts, are gross and repeated trespasses both upon the rights and property of the said O. D. Bleakley and the Kansas Natural Gas Company, and of your orator, and will work your orator great and irreparable loss and injury, for which he has no adequate remedy at law.

4. That if the defendants prevent the building of the said pipe lines of O. D. Bleakley and the Kansas Natural Gas Company, they will wholly destroy the market for the natural gas owned and produced by your orator and render the said lease and the well drilled thereon, and the gas which may be produced therefrom, and your orator's contracts, wholly valueless to your orator and cause the same to be wholly destroyed and lost to your orator, taken from him without due process of law and your orator abridged of his privileges and immunities as a citizen of this Nation and denied the equal protection of the laws and deprived of his property without due compensation, the obligation of his contracts impaired and your orator oppressed by a monopoly contrary to the principles of the Constitution of the United States and the state of Oklahoma as hereinbefore referred to.

In Consideration Whereof and for as much as your orator can only have adequate relief in this Honorable Court, and to the end that your orator may be saved the trouble, delays and expense incident to separate suits against the said respondents for relief from and against the wrongful and unlawful acts and deeds of the respondents hereinbefore complained of, your orator prays this Honorable Court to take cognizance of the several charges set forth in the premises; and

To the End, therefore, that the said respondents may, if they can, show why your orator should not have the relief
140 herein prayed for and may according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all the matters aforesaid and to each of the several interrogatories hereinafter numbered and set forth, but not upon oath, the answer under oath being expressly waived, as by the note hereunder written, they are respectively required to answer, that is to say:

1. Did you not draft the act, law or statute, a copy of which is hereto attached and marked "Exhibit B," before the same was presented to the Legislature of the state of Oklahoma?

2. Did you not draft the said act, law or statute for the express purpose of preventing the construction and operation of gas pipe lines engaged or to be engaged in the piping or carriage of natural gas into the states of Kansas and Missouri?

3. If you did not draft the said act, law or statute did you not read and approve the same before the same was presented to the Legislature of the State of Oklahoma?

4. Was not the said act, law or statute approved by you and presented to the said Legislature for the express and only purpose on your part of preventing the piping and transporting of gas out of and from the state of Oklahoma?

5. Did you not in or about November, 1907, send a telegram, letter or other communication to John J. Shea, one of the above-named respondents, directing him to prevent the laying and construction of gas pipe lines from Oklahoma into Kansas?

141 6. If you did send the telegram, letter or other communication referred to in the fifth interrogatory please attach to your answer a copy of such telegram, letter or communication if in writing, and if not state the substance thereof.

7. Did you not in or about November, 1907, receive a telegram, letter or other communication from Charles N. Haskell, one of the above named respondents, directing you to prevent the laying and construction of gas pipe lines from Oklahoma into Kansas?

8. If you did receive the telegram, letter or other communication from Charles N. Haskell referred to in the seventh interrogatory please attach to your answer a copy of such telegram, letter or other communication if in writing, and if not state the substance thereof.

9. Did you not in or about November, 1907, tear up with force and violence a gas pipe line laid or being laid across the line dividing the states of Kansas and Oklahoma?

10. If you say you did not yourself tear up such line please state whether or not you did not order and direct the same to be torn up by others?

11. Was not, in or about November, 1907, a gas pipe line laid or being laid across the line dividing the states of Kansas and Oklahoma torn up and destroyed with force and violence?

12. State, if you know, who tore up the said line and who ordered and directed the same to be torn up.

13. If you answer and say that you did not yourself tear up

142 and destroy the said gas pipe line state whether or not the tearing up and destruction of the said line was not done with your knowledge, acquiescence and approval.

14. Did you not institute or cause to be instituted in the District Court of Washington County, Oklahoma, a suit in which the state of Oklahoma ex relatione John H. Kane, County Attorney of Washington County, Oklahoma, was plaintiff and the Kansas Natural Gas Company and the Wichita Natural Gas Company and other parties whose names were to the plaintiff unknown, were defendants?

15. Was not the said suit instituted for the purpose of enjoining and preventing the defendants from building and constructing a gas pipe line out of and from the state of Oklahoma into the state of Kansas?

16. Did you not prepare or attempt to prepare the petition or bill of complaint in the said suit in such a form that no federal question would appear on the face of the plaintiff's pleadings therein?

17. Did you not institute or cause to be instituted in the District Court of Washington County, Oklahoma, a suit wherein the state of Oklahoma ex relatione Charles West, Attorney General, was plaintiff and Charles Owen and —— Connelly were defendants?

18. Was not the said suit instituted for the sole purpose of enjoining and preventing the defendants from operating a gas pipe line then running out of and from the state of Oklahoma into the state of Kansas?

19. Did you not prepare or attempt to prepare the petition
143 or bill of complaint in the said suit in such a form that no federal question would appear on the face of the plaintiff's pleading therein?

20. Did not the defendants in that suit remove the case to this, the Circuit Court of the United States in and for the Eastern District of Oklahoma?

21. Did you not appear and move the remanding of the said case to the said District Court of Washington County, Oklahoma, because no federal question appeared upon the face of the pleadings?

22. Was not the case so remanded?

23. After the case was remanded was not a consent decree entered therein, and is not "Exhibit D" hereto attached a correct copy thereof?

24. Was not a receiver appointed in the said case?

25. During the time the said receiver was in charge of the said pipe line and after such consent decree was entered, was not the pipe line referred to in the pleadings in the said case operated in exactly the same manner as it was before the petition therein was filed?

26. Did you not institute or cause to be instituted in the District Court of Osage County, Oklahoma, a suit wherein the state of Oklahoma ex relatione L. E. Roberts, County Attorney, was the plaintiff, and the Indian Territory Illuminating Oil Company (a corporation), H. V. Foster, John H. Brennan, A. D. McBride, Kenneth K. McLaren, T. N. Barnsdall, Charles W. Willard, James A. Simmons, James S. Glenn, M. I. Duel, A. T. Fancher and Mortimer F.
144 Stilwell were defendants, and was not the said suit instituted for the express purpose, inter alia, of preventing the building and construction of gas pipe lines conveying natural gas out of and from the state of Oklahoma into the states of Kansas and Missouri, or either or both of them?

27. Did you not patrol or cause to be patrolled with guards or patrols, either armed or unarmed, the south side of the state line dividing Kansas and Oklahoma?

28. Did you not instruct or order the said guards or patrols, or cause them to be instructed or ordered, to prevent with force and

violence the building or construction of any gas pipe line across the said state line?

29. Was not the said state line so patrolled?

30. Who caused the said state line to be so patrolled?

31. What were the instructions given to the said guards or patrols?

32. Was and is it not your purpose to prevent the building and construction of gas lines running out of Oklahoma and the piping and transportation of natural gas out of and from the said state?

Wherefore, your orator, needing relief, prays:

First. That the said defendants, and each and every of them, may be made defendants to this bill of complaint and compelled to answer each and every allegation therein contained, but not under oath, the answer under oath being expressly waived.

145 Second. That it be adjudged and decreed that Chapter 67 of the Session Laws of 1907-1908 of the state of Oklahoma, "Exhibit B," is illegal and void because in conflict with, offending against and in contravention of Clause 3 of Section 8 of Article I of the Constitution of the United States granting to Congress power to regulate commerce between the states, in that it is an absolute inhibition upon the exportation of an article of commerce; and of the XIVth Amendment of the Constitution of the United States in that it abridges the privileges and immunities of your orator a citizen of the United States and deprives him of his property without due process of law, and denies to him the equal protection of the laws, and of Section 10 of Article I of the Constitution of the United States in that it impairs the obligation of your orator's contracts; and of Section 57 of Article V of the Constitution of Oklahoma in that it embraces more than one subject, no one of which is clearly expressed in its title, and it is neither a general appropriation bill, a general revenue bill nor a bill adopting a code, digest or revision of statutes; and of Section 24 of Article II of the Constitution of Oklahoma in that it deprives your orator of his private property without just compensation; and of Section 32 of Article II of the Constitution of Oklahoma in that it creates a monopoly contrary to the genius of free government.

Third. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which would result from the threatened enforcement of said act, and that such injury would be irreparable.

Fourth. That the said defendants, and each and every of them, may be restrained from committing any of the acts and deeds herein complained of, and from any further violation of your orator's

146 rights in the premises, by a writ of injunction issuing out of and under the seal of this Honorable Court, perpetually enjoining and restraining the said defendants and each and every of them, their respective agents, servants, attorneys, workmen and employees, from tearing up, destroying or in any way interfering wth the laying, building and construction of the said gas pipe lines of O. D. Bleakley and the Kansas Natural Gas Company; and from instituting, prosecuting or conducting any suits and from suing out any writs of process in any of the state courts of Oklahoma against the said O. D. Bleakley or the said Kansas Natural Gas Company for

the purpose of enjoining, restraining or interfering with them, or either of them, in the laying, building, construction, maintenance or operation of their said gas pipe lines either under the authority of the said law or statute, "Exhibit B," or any other law or statute of the state of Oklahoma, or under any pretended common law, right, rule of action or unwritten law of the state of Oklahoma.

Fifth. That a provisional or preliminary injunction be issued forthwith, restraining the said defendants and each and every of them, their respective agents, servants, attorneys, workmen and employees from committing any of the acts and deeds herein complained of by your orator, and from tearing up, destroying or in any way interfering with the laying, building and construction of the said pipe lines of O. D. Bleakley and the Kansas Natural Gas Company, and from instituting, prosecuting or conducting any suits or suing out any writs of process in any of the state courts of Oklahoma against the said O. D. Bleakley and the said Kansas Natural Gas Company for the purpose of enjoining, restraining or interfering with them in the laying, building, construction, maintenance or operation of their said gas pipe lines, either under the
pretended authority of the said act, law or statute, "Exhibit
147 B," or any other act, law or statute of the state of Oklahoma, or under any pretended common law, right, rule of action or unwritten law of the state of Oklahoma.

Sixth. That the said defendants be decreed to pay the costs of this suit.

Seventh. That this Honorable Court grant your orator such other and further relief as the equity of the case may require and to your Honors may seem meet.

Eighth. And may it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayer of his bill, but also a writ of subpœna of the United States of America directed to the said defendants and each and every of them, commanding them and each and every of them on a day certain to appear and answer unto this bill of complaint and to abide and perform such order, direction and decree as to your Honors may seem meet and proper and as required by the principles of law, equity and good conscience.

And your orator will ever pray.

T. H. STANFORD,
EUGENE MACKEY,
Solicitors for the Complainant.

NOTE.—The respondent, Charles N. Haskell, is required to
148 answer all of the above special interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

The respondent, John J. Shea, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

The respondent, John H. Kane, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31 and 32.

The respondent Frank B. Burford, is required to answer all of the above special interrogatories numbered respectively 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31 and 32.

149 State of Pennsylvania,
County of Allegheny, ss:

Be It Remembered that on this — day of January, in the year of our Lord one thousand nine hundred and nine, before me, a Notary Public in and for the said county and state, personally appeared A. W. Lewis, who being by me first duly sworn according to law did depose and say that he is the above-named complainant, and that he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the statements made therein are true of his own knowledge and belief except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

——— ———.

Subscribed and sworn to before me the day and year last above written. In witness whereof I have hereunto set my hand and affixed my notarial seal.

My commission expires —.

———.
Notary Public.

150 Exhibit A.

Articles of Agreement Made and Entered Into This Twenty-third Day of January, in the Year of Our Lord One Thousand Nine Hundred and Nine, at the City of Pittsburgh, Pennsylvania, by and Between A. W. Lewis, of Geneva, Ohio, and The Kansas Natural Gas Company, a Corporation:

Whereas, the Gas Company purposes to build a trunk gas pipe line for the transportation of gas from Oklahoma to Kansas, and is in the market for natural gas immediately upon the completion of the said line; and

Whereas, the said Lewis is the owner of a certain oil and gas mining lease made to him by Stephen B. Tehee, dated March 12, 1905, upon the west half of the southeast quarter of Section Sixteen, Township Twenty-six, Range Thirteen, and containing eighty acres, upon which he has drilled one gas producing well, the output of which he desires to market:

Now these articles witnesseth: That the parties hereto, for and in consideration of one dollar lawful money of the United States of

America unto each of them by the other paid at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, as well as of their mutual covenants hereinafter recited on the part of each to be paid, kept and performed, have covenanted and agreed with each other as follows:

First. The Gas Company, immediately upon the completion of its said trunk line, agrees to set and install on the said leasehold a proportional meter and to receive through the same and into its said pipe line, against the pressure of the gas therein, all the dry, merchantable gas which may be produced from the said well, and to pay therefor the sum of one and three-fourths cents for each thousand cubic feet of gas delivered through the said meter into the said
151 line on the basis of a two pound pressure. All payments to be made on or before the twenty-fifth day of the month succeeding that in which the gas is delivered.

Second. The said Lewis agrees that he will sell and deliver all the output of his said well through the said meter and into the said line against the line pressure of the gas therein, for the above stated price.

Third. The said meter shall be read by the Gas Company as near as possible to the last day of each month, in the presence of the said Lewis or his representatives if he desires to be present. Each reading of the said meter shall be conclusive upon both of the parties hereto unless objections in writing are filed thereto within ten days after the same is made.

Fourth. If the said meter should at any time fall out of repair or fail to register then the reading of the said meter for a like period of time, either preceding or following that in which the meter is out of repair or fails to register shall, taking into consideration the line pressure, be the basis upon which the parties hereto shall settle.

Fifth. If the said Lewis shall at any time believe the said meter to register incorrectly the amount of gas passing through it, he shall have the right to demand that the same shall be tested. But if upon such test such meter shall be found to register correctly or fast the expense of such test shall be borne by him; but if it shall register slow then the Gas Company shall replace the said meter with one registering correctly the amount of gas passing through it. A meter which shall register between two per cent. fast and two per cent. slow shall be treated as registering correctly for the purposes of this contract. The Gas Company shall at any time have the right to replace the said meter with another registering correctly the amount of gas passing through it. All terms and conditions in this con-
152 tract provided for shall apply not only to the first meter installed but also to any meter or meters which may replace the same.

Sixth. All payments hereunder shall be made to the said Lewis at Geneva, Ohio, by check mailed to him at that address within the time above stated.

Seventh. This contract shall run for three years after the completion of the said line and thereafter until one of the parties hereto shall give thirty days' written notice of his or its desire to terminate the same.

Eighth. It is understood that the said Lewis shall have the right to take from the said well such amount of gas as he may need for drilling and operating on the said leasehold for oil or gas; but he shall as far as possible utilize casing head gas first.

Ninth. This contract executed in duplicate.

Tenth. This contract shall bind and run in favor of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

In witness whereof the said A. W. Lewis has hereunto set his hand and affixed his seal and the said Kansas Natural Gas Company has caused its corporate name to be hereunto subscribed by its President and its common and corporate seal to be hereto affixed and the same attested by its Acting Secretary the day and year first above written.

A. W. LEWIS. [SEAL.]
KANSAS NATURAL GAS COMPANY,
By T. N. BARNSDALL, *Its President.*

[L. S.]

Attest:

C. S. JAMES,
Its Acting Secretary.

153 EXHIBIT B.

Chapter 67.

Pipe Lines.

Regulating Gas and Oil Pipe Lines.

Article 1.

An act regulating the laying, constructing, and maintaining and operating of gas pipe lines for the transportation of natural gas within the state of Oklahoma, defining the modes of procedure for the exercise of the right of eminent domain for such purposes, providing for the inspection and supervision of the laying of such pipe lines and limiting the gas pressure therein, and providing penalties for the violation thereof.

Be It Enacted by the People of the State of Oklahoma.

SECTION 1. Any firm, co-partnership, association or combination of individuals may become a body corporate under the laws of this state for the purpose of producing, transmitting, or transporting natural gas to points within this state by complying with the general corporation laws of the state of Oklahoma, and with this Act.

SEC. 2. No corporation organized for the purpose of, or engaged in the transportation or transmission of natural gas within this state shall be granted a charter or right of eminent domain, or right to use the highways of this state unless it shall be expressly stipulated

in such charter that it shall only transport or transmit natural gas through its pipe lines to points within this state; that it shall not connect with, transport to, or deliver natural gas to individuals, associations, co-partnerships, companies or corporations engaged in transporting or furnishing natural gas to points, places or persons outside of this state.

154 SEC. 3. Foreign corporations formed for the purpose of, or engaged in the business of transporting or transmitting natural gas by means of pipe lines, shall never be licensed or permitted to conduct such business within this state.

SEC. 4. No association, combination, co-partnership or corporation shall have or exercise the right of eminent domain within this state for the purpose of constructing, or maintaining a gas pipe line or lines within this state, or shall be permitted to take private or public property for their use within this state, unless expressly granted such power in accordance with this Act.

SEC. 5. The laying, constructing, building and maintaining a gas pipe line or lines for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets, or alleys in this state, or of any county, city, municipal corporation or any other public or private premises within this state is hereby declared an additional burden upon said highway, bridge, road, street or alley, and any other private, or public premises may only be done when the right is granted by express charter from the state and shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law.

SEC. 6. All pipe lines for the transportation or transmission of natural gas in this state shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mining inspector for such duty, and the expenses of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas.

SEC. 7. No pipe line for the transportation or transmission of natural gas shall be subjected to a greater pressure than three hundred pounds to the square inch, except for the purpose of

155 testing such lines, and gas pumps shall not be used on any gas pipe lines for the transportation or transmission of natural gas or used on or in any gas well within this state.

SEC. 8. Any corporation granted the right under the provisions of this Act to exercise the right of eminent domain, or use the highways of this state to construct or maintain a gas pipe line or lines for the transportation or transmission of natural gas to points within this state, which shall transport or transmit any natural gas to a point outside of, or beyond this state, or shall connect with or attempt to connect with or threaten to connect with any gas pipe line furnishing, transporting, or transmitting gas to a point outside of, or beyond this state, shall by each or all of said acts, forfeit all right granted it or them by the charter from this state, and said forfeiture shall extend back to the time of the commission of said act or said

acts in violation of this Act; and such act or acts shall of themselves work a forfeiture of any and all rights of any and every kind and character which may be or may have been granted by the state for the transportation or transmission of natural gas within this state, and all the property of said corporation and all the property at any time belonging to said corporation, at any time used in the construction, maintaining or operation of said gas pipe line or lines shall, in due course of law, be forfeited to and be taken into the possession of the state through its proper officer and in said action there shall be a right to the state of the appointment of a receiver, either before or after the judgment, to be exercised at the option of the state and the officer taking possession of said property shall immediately disconnect said pipe line or lines at a proper point in this state from any pipe line or lines going out of, or beyond the state. And said property shall be sold as directed by the court having jurisdiction of said proceedings, and the proceeds of said sale shall be applied, first to the payment of the cost of such proceeding, and the re-
156 mainder, if any, paid into the school fund of the state, and said charter under which said act or acts were committed shall be revoked, and no charter for the transportation or transmission of natural gas shall ever be granted to any corporation having among its stockholders any person who was one of the stockholders of said corporation whose charter has or may have been forfeited as aforesaid, and if any such charter shall have been granted, and thereafter a person shall become a stockholder thereof who was one of the stockholders of the corporation whose charter has been or may have been forfeited, as herein provided, the charter of said corporation, one of whose stockholders is as last named, shall therefore be forfeited and revoked. Provided, that any person who may be denied the right to become a stockholder as above prescribed may be granted the right to become such stockholder by the corporation commission, when such person shows to such commission that he was not a party to the former violation of this Act.

SEC. 9. No pipe lines for the transportation or transmission of natural gas shall be laid upon private or public property when the purpose of such line is to transport or transmit gas for sale to the public until the same is properly inspected as provided in this Act and before any gas pipe line company shall furnish or sell gas to the public, it shall secure from the inspector a certificate showing that said line is laid and constructed in accordance with this Act, and under the inspection of the proper officer, provided, that nothing in this Act shall be construed to prevent persons drilling for oil and gas from laying surface lines to transport of transmit gas to wells which are being drilled within this state and further provided, that factories in this state may transport or transmit gas through pipe lines for their own use for factories located wholly within this state upon securing the right of way from the state over or along the high-
ways and from property owners to their lands.

157 SEC. 10. That no person, firm or association or corporation shall ever be permitted to trans-it or transport natural gas by pipe lines in this state or in this state construct or operate a pipe line

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for the transmission of natural gas, except such persons, firms, associations, or corporations be incorporated as in this Act provided, except as in section 9 of this Act, and provided further that all persons, firms, corporations, associations and institutions now doing the business of transporting or transmission of natural gas in this state and otherwise complying with this Act are hereby permitted to incorporate under the provisions of this Act within ten days after the passage and approval of the same.

SEC. 11. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 12. An existing emergency is hereby declared by the legislature for the preservation of the public peace, health and safety of the state.

SEC. 13. This act shall take effect from and after its passage and approval as provided by law.

Approved December 21, 1907.

158 EXHIBIT C.

Petition in Equity.

In the District Court of the State of Oklahoma in and for Washington County.

THE STATE OF OKLAHOMA on the Information and Relation of CHAS. WEST, Attorney General, Plaintiff.

VS.

CHAS. OWEN and —— CONLEY, Whose Christian Names *are* Unknown, Defendants.

In the District Court of the State of Oklahoma in and for Washington County.

Comes now Charles West, the Attorney General of the State of Oklahoma, and inform- the Court, and gives the Court to know that in the County of Washington, in this State, defendants, Chas. Owen and —— Conley, whose Christian names *are* unknown, are constructing and operating a pipe line transmitting natural gas between two or more points in this State, and as such are connecting at the State line with other like lines, without authority of law so to do.

That plaintiff does not know whether the defendants are committing said acts under the guise of the character of a corporation or as a co-partnership, or as individuals, but that if said acts are being committed under color of a charter of a corporation said corporation has not accepted completely all the provisions of the Constitution applicable to transmission Companies and other public service corporations.

That said defendants are, without authority so to do, entering upon and laying gas pipes in, through and over highways of the

State and private property, without being entitled to the
159 benefit of the right of eminent domain in this State, and without having become a body corporate, pursuant to, and in accordance with the laws of this State.

That said defendants, in so doing, are keeping and maintaining a common nuisance in that they are thereby annoying, injuring and endangering the comfort, repose, health and safety of the people of this State, by attempting to exercise the right of eminent domain without any authority, therefor, and by unlawfully interfering with, obstructing and tending to obstruct, and rendering dangerous for passage the highways of the State over, through and across which gas pipe line is being constructed and operated and rendering other persons, to-wit: the owners of the land over which said gas pipe line is constructed and operated insecure in the use of their property by using the same for the transmission of natural gas from points to points in this State without authority so to do; and are rendering other persons, to-wit: the citizens of this State and owners of land therein insecure in their property, to-wit: natural gas, by piping natural gas through said pipe out of this State into the State of Kansas, and thereby withdrawing from the resources of this State valuable property, without authority so to do. That defendants are thus acting as if under a franchise or right without any authority so to do, and threaten to continue their said unlawful acts, and to increase the same by constructing and operating their said unlawful business in a southwardly direction, over, through and across the lands of other persons and other highways of the State.

That plaintiff is without any adequate remedy according to the Courts of the common law and is suffering irremediable injury in that there is no way to substitute and replace the natural gas thus transmitted away from the land of private persons and from this State into the State of Kansas. That under the surface of the earth there are connections between some and many of the deposits of natural gas, so that in piping the gas from one gas well tends
160 to exhaust the supply of natural gas under the lands of other persons at a great distance therefrom.

Wher-fore, the plaintiff prays that this Court grant an order restraining, and enjoining defendants, and all their agents and servants, abettors, comforters, assistants and accessories from in any way constructing or operating any natural gas pipe line in this State, or laying or constructing the same in, through or over the lands of any persons in this State, or any of the highways in this State, and that a Receiver be appointed to take possession of all of said property of defendants so used in constructing and operating said natural gas pipe line in this State to preserve the supply of natural gas for the citizens of this State from further waste, and for such other relief as the equity of the case may warrant, and for the costs of this action.

STATE OF OKLAHOMA.
By CHAS. WEST,
Attorney General, and
JOHN J. SHEA,
Assistant Attorney General.
SIDELL & SHIPMAN.

STATE OF OKLAHOMA,
County of Washington, ss:

John J. Shea, being first duly sworn, states that he is one of the Attorneys of the relator in the above entitled cause; that he has read the foregoing petition and is informed from persons likely to know the truth of the same and verily believes the above statements to be true to the best of his information and belief.

JOHN J. SHEA.

Subscribed and sworn to before me, this 13th day of December.

[SEAL.] JOHN B. CHURCHILL,
Clerk Dist. Court.

161 EXHIBIT D.

STATE OF OKLAHOMA,
County of Washington, ss:

In the District Court.

STATE OF OKLAHOMA ex Rel. CHAS. WEST, Attorney General,
Plaintiff,
vs.
CHARLES OWEN et al., Defendants.

Stipulation.

It is agreed by and between the state of Oklahoma and Chas. Owen, et al., that the decree attached hereto may be signed by Hon. T. L. Brown, Judge of the Second Judicial District at Vinita, and may be entered at Bartlesville, with the same force and effect as if the same were signed and entered in open court at Bartlesville.

It is also further agreed that the receiver herein, Jay H. Mullen, may make report of his doings to the Hon. T. L. Brown, Judge, who may examine, act upon, and approve said report in Chambers, directing the clerk at Bartlesville to enter the same of record there, all of which shall have the same force and effect as if it were done in open court.

Dated this 8th day of April, 1908.

(Signed) STATE OF OKLAHOMA,
By JOHN J. SHEA,
Special Attorney General.
CHARLES OWEN AND
OWEN & CONNELLY.

162 In the District Court.

STATE OF OKLAHOMA,
County of Washington, ss:

STATE OF OKLAHOMA ex Rel. CHAS. WEST, Attorney General,
Plaintiff,
vs.
CHARLES OWEN et al., Defendants.

Precedent for Decree.

Now on this 8th day of April, 1908, the same being one of the days of the regular —, 1908, term of this court, this cause came on to be heard upon the pleading and evidence taken herein, and a stipulation and agreement which is in words and figures as follows:

In settlement of the controversy pending between the state of Oklahoma on the information of the Attorney General vs Charles Owen, it is stipulated that all of the pipe lines, the subject matter in the controversy in the hands of the receiver, *is* the private property of Charles Owen; that G. W. Connelly owns a well that is attached to said line but has no ownership in any part of the line from the point where the line going from Connelly's well goes into the main trunk line of the defendant, Charles Owen.

That Charles Owen makes the statement, that upon the truth of the same in all respects, the following settlement and arrangements are made;

That in the estate of Kansas he serves gas to Cheyenne Window Glass Co., Caney, Kansas, Baker Bros. Glass Co., Caney, Kansas, Caney Glass Co., Caney, Kansas, to the residence of Chas. Owen, Caney, Kansas, Jno. Foot, Caney, Kansas, Wm. Williams, W. W. Barr, for domestic use to Connelly Flats, Caney, Kansas, the
163 residence of J. D. Canary, and to the Independence Gas Company of Caney, Kansas, which is furnishing gas to a green house and several dwelling houses; and thereby states that he does not furnish gas to any one except in, and not outside of, the *in*corporate limits of the town of Caney, Kansas, and Caney Township, and does not furnish gas to any Gas Company or any transmitter of gas except the said Independence Gas Company.

And it is thereupon agreed that so far as the authorities of the State of Oklahoma have authority therein that the statu quo now existing as stated above shall be maintained, it being expressly understood that the Independence Gas Company shall not increase its consumption from the pipe of Chas. Owen or any pipes leading from said four excepted sections, and that no gas shall ever be furnished to any other furnisher or transmitter of gas anywhere, but that the consumption of the private persons and businesses above named may be increased at any time to any amount that they themselves can use in the way they are now using it, but the kind of use shall not be changed.

The said Chas. Owen hereby undertakes to incorporate a gas transmission company in the state of Oklahoma in all respects according to law, and to transfer to it all of his leases and rights for the transmission of gas or laying of gas pipes, subject to the approval of the Secretary of the Interior, except that from on four sections of land, section fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), Township Twenty-nine (29), Range Thirteen (13) in the county of Washington, Oklahoma, and all the lines in these four sections are to be entirely disconnected if now connected, and if not now connected are never to be connected with any of the lines to be transferred to said Oklahoma corporation; and upon the performance of these undertakings the suit now pending is to be settled by a judgment in favor of the state of Oklahoma, making the injunction perpetual, except as to the transmission of gas
164 from said four sections into the places and business of persons named above through the line already in existence owned by said Chas. Owen, and that as to it the pending contracts are to be carried to completion but no new contracts are to be made without further agreement between the signing parties for the supply of gas except in the state of Oklahoma. And in case the state of Oklahoma shall not agree to any further contracts that none shall be made at all.

The intent of the foregoing agreement is that said Chas. Owen shall in all respects comply with the law of Oklahoma as to the transmission of natural gas and place himself in a position so to do within a reasonable time, and that in view of the fact that there is a contention between the signing parties as to whether contracts made by him to furnish gas in Kansas prior to statehood may be carried to completion or not, that he shall be allowed to carry the same to completion if drawn from the four sections above named.

Said Chas. Owen shall be given the right to drill as many wells as he may deem proper within said four sections, and for it to furnish gas anywhere in Oklahoma through his said corporation to be incorporated in Oklahoma, but that the lines of said corporation shall never be connected with lines transmitting gas into the state of Kansas. Said corporation shall be formed within thirty days from this time and application to the Secretary of the Interior to transfer his leases within ten days after said incorporation and he shall have sixty days from this time for the performance of any physical connection or disconnection herein made necessary.

CHAS. WEST,
Attorney General.
CHAS. OWEN.

And said stipulation and agreement is by the Court in all things approved, ratified and confirmed.

And the court being fully advised in the premises doth find the issues in favor of the plaintiff, and doth further find that the
165 temporary injunction and restraining order heretofore granted herein should be made perpetual, except in respect

of the gas produced upon sections fifteen, twenty-two, twenty-seven, and thirty-four of Township twenty-nine (29) north, Range thirteen (13) east, in Washington County, state of Oklahoma, and the pipe line used at the present time to convey said gas from said sections to the town of Caney, in the state of Kansas; and that the receivership herein be dismissed and the receiver discharged; and that the costs of this case be borne equally by the parties hereto, but in no event shall the amount of the costs be borne by the plaintiff or defendant exceed the sum of one hundred and eighty-four dollars and thirty-six cents ($184.36).

It is therefore ordered, adjudged, decreed that the temporary injunction herein, except so far as it effects the gas produced upon sections fifteen, twenty-two, twenty-seven, and thirty-four, Township Twenty-nine (29) north, Range Thirteen (13) east, in Washington County, state of Oklahoma, and the pipe line now used to convey said gas from said sections to the town of Caney, in the state of Kansas, in accordance with the stipulations and agreement in this case, be and the same is hereby made permanent; and the defendants, and each of them, their agents and employees, and all persons claiming under them, or acting under the direction or authority of them or of either of them, be and they are hereby perpetually enjoined and restrained from piping, conveying or removing in any manner, gas from the state of Oklahoma, to any point or points beyond and outside of the state of Oklahoma, and from connecting any other pipe line or lines used for conveying gas to or with said pipe line between the sections aforementioned and said Caney, Kansas; and the receivership herein be dismissed and the receiver be, and hereby is discharged.

And it is further ordered and decreed that the costs in this suit and the receivership be, and they hereby are taxed, at the
156 sum of three hundred sixty-eight dollars and seventy-two cents ($368.72) and that each of the parties hereto pay one-half thereof, for which let execution issue after fifteen days.

T. L. BROWN, *Judge.*

WASHINGTON COUNTY,
State of Oklahoma, ss:

I, John B. Churchill, Clerk of the District Court in and for the county aforesaid, do hereby certify the above and foregoing to be a full, true and complete copy of the decree in the case of the State of Oklahoma ex rel. Chas. West, Attorney General vs. Chas. Owen et al., as the same appears of record among the files of this office.

Witness my hand and the seal of said court this 13th day of April, 1908.

[SEAL.] JOHN B. CHURCHILL,
District Clerk.

167 EXHIBIT E.

In the District Court of the State of Oklahoma in and for Washington County.

THE STATE OF OKLAHOMA ex Rel. JOHN J. SHEA
v.
THE KANSAS NATURAL GAS COMPANY, THE WICHITA NATURAL GAS COMPANY, and Others, Names Unknown, Defendants.

Petition in Equity.

Comes now John J. Shea and states as a cause of action

1. That he is a citizen of, resident and tax payer of Washington County and state of Oklahoma.

2. That this action is brought for and in his own interest and for and on behalf of other citizens and tax payers of said Washington County, Oklahoma.

3. That the defendants, together with their agents, employees, servants and others whose names are unknown to this plaintiff are now engaged in laying a pipe line for the transportation of gas over, along, across and through the highways and roads of this county, without right or legal authority and without having obtained lawful right to lay and construct said line, and without having obtained lawful permission or right to construct and maintain the same.

4. That prior to the 16th day of November, 1907, no person, firm or corporation was permitted to maintain or construct a pipe line for the transportation of gas in the Indian Territory until permission was first obtained from the Department of the Interior, but the defendants herein not having such permission, and without any right or lawful authority, are now proceeding to lay, construct and equip said gas line wrongfully and illegally.

168 5. That by the digging of the ditches and the laying of the line aforesaid the defendants are committing a nuisance and the building and maintenance of said gas line will be and continue a public nuisance and will be dangerous to the lives and health of the people of this county.

6. That the business of transporting gas through pipe lines is one of great danger owing to the heavy pressure caused by conveying quantities of gas through such lines and the public safety demands that gas lines be constructed under proper inspection and under the supervision of competent persons skilled in the business.

7. That said defendants are attempting to construct said line at this and in the manner set out in this petition for the purpose of avoiding inspection and for the further purpose of evading the laws of the state of Oklahoma governing corporations exercising the right of eminent domain.

8. That said defendants have not condemned or purchased a right of way for said pipe line and have not attempted to comply with the laws of the state governing the laying of pipe lines.

9. That defendants will, unless restrained by order of this court, proceed to lay, construct and maintain said gas line, to dig said ditches and cross the highways of this county, all to the great irreparable damage of this plaintiff and all other citizens of the said Washington County.

10. That defendants are at the present time laying said pipe line at or near Lot One, Section 13, Township 29, Range 13, in Washington County.

11. That plaintiff has no plain speedy or adequate remedy at law and has no remedy at law.

12. That the judge of this judicial district is at the present time absent from the County of Washington.

13. Wherefore, plaintiff prays that a temporary injunction issue from this court restraining the defendants, their agents, attorneys, employees workmen or others from continuing the construc-
159 tion of said gas line, and that all of the above named persons be enjoined from doing any act of any kind or character for the further building or construction of said gas line, the digging of any ditches or the doing of any further work upon said line. That upon final hearing this injunction be made perpetual, for such other and further relief as may be just and equitable in the premises and for costs.

JOHN J. SHEA.

STATE OF OKLAHOMA,
County of Washington, ss:

John J. Shea being first duly sworn states that I have read the above and foregoing petition and that based on information and belief the statements therein contained are true.

JOHN J. SHEA.

Subscribed and sworn to before me this 16th day of November, 1907.

____ ____,
County Judge.

170 EXHIBIT F.

In the District Court, Second Judicial District of the State of Oklahoma.

STATE OF OKLAHOMA,
County of Washington, ss:

THE STATE OF OKLAHOMA on the Relation of JOHN H. KANE, County Attorney of Washington County, State of Oklahoma, Plaintiff,

v.

THE KANSAS NATURAL GAS COMPANY, THE WICHITA NATURAL GAS COMPANY, and Other Parties Whose Names are to Plaintiff Unknown, Defendant-.

Petition.

Comes now the state of Oklahoma on the relation of John H. Kane, the duly elected, acting and qualified county attorney of the county of Washington, state of Oklahoma, and for its cause of action against the defendant alleges and says:

That the defendants, the Kansas Natural Gas Company, and The Wichita Natural Gas Company, are corporations organized under laws other than those of the state of Oklahoma.

That said corporations have never complied with the laws of the state of Oklahoma with relation to foreign corporations doing business within the state.

That said corporations have never, by the proper authority of the state of Oklahoma, been granted any right, privilege or immunities within the said state or the right to do business within said state in any manner or form.

That said defendants, together with their agents, employees, servants and others whose names are to this plaintiff unknown, are now laying a pipe line up to and across the domain of the state of Oklahoma, and that plaintiff is informed and believes that said
171 company intends and are about to attempt to extend said pipe lines, ditches and pipes across and over into the domain of the state of Oklahoma and through said domain to some point located within said state.

That the digging of said ditches and laying of said pipe and the construction of said pipe line will be completed over and across the highways of the state of Oklahoma and across the lands and property of citizens of the state of Oklahoma, and that the digging of said ditches and the laying of said pipe, and the construction of said pipe line over and across the highways of the state of Oklahoma and the lands of citizens thereof is being done without the purchase of any right of way over said highways of the condemnation by due process of law of the right of way over or through said highways and lands, and that the laying of said pipe line over said highways is an inter-

ference with the right of easement in said highways held by the state of Oklahoma for the benefit of its citizens.

That the laying of said pipe line over and across the land of citizens of Oklahoma is an interference with the property rights of said parties in said land.

Further that the laying of said pipe line is a common nuisance for the reason that the business of transporting gas through pipe lines is one of great danger owing to the heavy pressure caused by conveying quantities of gas through such lines, and that the plaintiff is informed and verily believes that it is the intention of said defendants when said pipe line is constructed to conduct through said pipe line large quantities of natural gas and that said pipe line is being constructed for that purpose.

That the business of transporting gas is of such a nature that in order to properly protect the public health and safety pipe lines should be built under the rules and regulations of the proper authority of the state and under proper superintendence and inspection.

The said companies are, plaintiff verily believes, about to
172 lay its pipe line without reference to the rules and regulations, inspection or superintendence of the proper officers of the state of Oklahoma.

That plaintiff verily believes that defendants will, unless restrained by the orders of this court, proceed to lay, construct and maintain said gas pipe line, dig said ditches and lay said pipe over and across the highways of this state and lands of the citizens thereof, and to maintain a common nuisance within the state of Oklahoma

That the results accruing from the laying of said pipe line and the interference by said company through the laying of said pipe line with the rights of the state of Oklahoma and the citizens thereof cannot be properly compensated in damages.

That plaintiff has no speedy or adequate remedy at law, and has no remedy at law.

That the judge of this judicial district is at present absent from the county of Washington.

Wherefore, plaintiff prays that a temporary injunction issue from this court restraining the defendants and their agents, attorneys, workmen, employees or any others under their direction or control from continuing the construction of said gas line or from digging any ditch, laying any pipe or constructing any line whatsoever over and across the lands located in the state of Oklahoma, or over, through or across any highways of the state of Oklahoma, or from doing any act of any kind or character for the further building or construction of said line within the state of Oklahoma. And that upon final hearing this injunction may be made permanent, and for such other and further relief as may to the court seem meet and for the costs of this action.

JOHN H. KANE,
County Attorney.
By FRANK B. BURFORD,
Deputy County Attorney and Special Attorney General.
JOHN SHAY,
Special Attorney General.

173 COUNTY OF WASHINGTON,
State of Oklahoma, ss:

Frank B. Burford, Deputy County Attorney of Washington County, state of Oklahoma, being duly sworn states that he has read the above and foregoing petition and that the statements therein contained are true to the best of his knowledge and belief.

FRANK B. BURFORD.

Subscribed and sworn to before me this 18th day of November, 1907.

A. T. DUMENIL.
County Judge.

174 EXHIBIT G.

STATE OF OKLAHOMA,
County of Osage, ss:

STATE OF OKLAHOMA on the Relation of L. F. ROBERTS, County Attorney, Plaintiff,

v.

THE INDIAN TERRITORY ILLUMINATING OIL COMPANY (a Corporation), H. V. Foster, John H. Brennan, A. P. McBride, Kenneth K. McLaren, T. N. Barnsdall, Charles W. Willard, James A. Simmons, James S. Glenn, M. I. Duel, A. T. Faucher and Mortimer F. Stilwell, Defendants.

Petition.

Plaintiff states that he is the duly elected, qualified and acting county attorney within and for Osage County, in the State of Oklahoma, that the defendant, the Indian Territory Illuminating Oil Company, is a foreign corporation organized and existing under the laws of the State of New Jersey; that the defendants M. V. Foster, James S. Glenn, John H. Brennan, A. P. McBride, Kenneth K. McLaren, Charles W. Willard, James A. Simmons, M. I. Duel and A. T. Faucher constitute its board of directors, and that the defendant Mortimer F. Stilwell is its secretary and treasurer; that the said defendant corporation has designated and appointed A. J. Biddison, late of the city of Pawnee, in Pawnee County, but now residing at the City of Tulsa, in Tulsa County, in said State, as its agent upon whom service of process may be made in any action in which said corporation may be a party, and has stipulated and agreed in writing duly filed in the office of the Secretary of State, that service upon such agent shall be taken and held as due service upon such corporation.

175 That said defendant, the Indian Territory Illuminating Oil Company, and each of the other defendants, officers and directors of said Indian Territory Illuminating Oil Company, each acting in his official representative and personal capacity, are doing

and have done, and are permitting and have permitted, to be done acts which amount to a forfeiture of their rights and privileges as a corporation, and their personal rights as the representatives of such corporation, and have exercised and are exercising powers not conferred by law upon such corporation, and are doing and permitting things to be done by said corporation, and its agents and representatives which are prohibited by law in the following particulars, to-wit:

I. That the said defendant corporation, and its officers and directors as such, are engaged in the business of transporting and transmitting natural gas by means of pipe lines between various points within this state, and more particularly between points in Osage and Washington counties in this state, and is owning, maintaining and operating more than sixty miles of gas pipe lines for that purpose in said counties.

II. That said defendant corporation acting by and through its officers, directors, agents, servants and employees, and more particularly through the defendant T. N. Barnsdall, as well as through divers other persons to this plaintiff unknown, is now negotiating and seeking to contract with divers municipal corporations and persons outside of the state of Oklahoma, for the purpose and with the intent of extending its gas pipe lines along, over, under, across or through the highways, roads, bridges, streets and alleys in this state and in several counties, cities, towns and municipalities thereof, and to points outside of and beyond the boundaries of this state, and in so doing to exercise the right of eminent domain without authority of law, and to use, occupy and obstruct said highways, roads, bridges,
streets and alleys in this state without authority of law for
176 the purpose of transporting or transmitting natural gas between different points within the state and to points outside of and beyond the state all of which said defendant corporation, its officers, directors and employees, including said defendant Barnsdall and said unknown persons, are now threatening and attempting to do without any right, license or authority from the state of Oklahoma.

III. That prior to the 16th day of November, A. D. 1907, the said defendant corporation acquired and owned and now owns and controls a certain leasehold interest in and to six hundred and eighty thousand acres of land in Osage County, State of Oklahoma, and acquired said leasehold interest for the exclusive purpose of mining and prospecting for mining for oil and gas and for no other purpose; that in violation of the constitution and laws of this state, said defendant corporation has engaged in and is now engaged in trading, dealing in and sub-letting said leasehold interest to certain other persons, firms and corporations, whose names are to this plaintiff at this time unknown. That the defendant corporation has never mined or prospected, and is not now mining or prospecting for oil and gas as provided for in its lease contract, but that the same is being wholly done and carried on by its said sub-lessees. That the said defendant corporation withholds from its said lessees all the gas produced from said leased premises, and retains the same as its own property, and has charged and is now charging its said sub-

lesses royalties and bonuses for the privilege of mining and prospecting for oil and gas under and by virtue of their lease contracts with said defendant corporation.

IV. Plaintiff further states that the defendant Indian Territory Illuminating Oil Company is a subsidiary to, a branch of and controlled by the Standard Oil Company, a corporation organized under and by virtue of the laws of the state of New Jersey, which now has and for many years past has had, by virtue of owning
177 the controlling interest in numerous subsidiary corporations, associations and companies, a virtual monopoly in the production, transportation, refining, handling and sale of petroleum and natural gas throughout the United States; that the control of said defendant, Indian Territory Illuminating Oil Company by the Standard Oil Company is exercised through the defendants, T. N. Barnsdall, James S. Glenn, H. V. Foster, A. P. McBride, Charles W. Willard, James A. Simmons and M. L. Duel, directors of the defendant Company who are agents and representatives of said Standard Oil Company. That the said defendant, Indian Territory Illuminating Oil Company has entered into a combination and agreement with said Standard Oil Company and with the said T. N. Barnsdall and his co-defendants representatives of said Standard Oil Company and with divers other persons to plaintiff unknown, for the purpose of enabling said Standard Oil Company to monopolize and control the entire production of natural gas in the State of Oklahoma for the purpose, with the intent and effect of illegally restraining trade and commerce within this state; that in pursuance of said agreement, understanding and purpose said defendant Corporation has in all of its sub-leasing contracts on said six hundred and eighty thousand acres of Osage lands, more than three hundred and fifty in number, (saving and excepting only its sub-lease to the Pawhuska Oil & Gas Company) reserved to itself all of the natural gas found or produced on said leasehold premises, and has refused and now refuses to permit any of its said sub-lessees (saving and excepting only said Pawhuska Company) to dispose of, sell or utilize for commercial purposes any of the natural gas produced thereon; that in further pursuance of said combination and agreement between said defendant, Corporation, Standard Oil Company, said Barnsdall and others, said defendant Company has transferred and assigned
178 and has contracted to transfer and assign to said Barnsdall all of the gas produced from its said leasehold on the said six hundred and eighty thousand acres of Osage lands. That in further pursuance of said combination, agreement and purpose, said Barnsdall, together with his co-defendants, and said other persons to plaintiff unknown, have procured and now own and control leases for the entire production of natural gas on approximately five hundred thousand acres of lands in that part of the state of Oklahoma lying adjacent to said six hundred and eighty thousand acre tract in Osage County; that said last mentioned lands together with that covered by said six hundred and eighty thousand acre lease in Osage County comprise all the lands producing natural gas in the state of Oklahoma. That said several acts, agreements, con-

tracts and combinations are in restraint of trade or commerce within this state, and are against public policy and illegal.

Wherefore, plaintiff prays the judgment of this Honorable Court that said defendant, the Indian Territory Illuminating Oil Company, be ousted from doing business within the State of Oklahoma; that it be enjoined and restrained from conducting, carrying on and exercising any corporate franchise whatsoever within this state and that the said individual defendants and each of them be restrained and enjoined from acting or assuming to act in any corporate capacity in said State; that forfeiture be adjudged of all the property, effects and franchises of said Corporation to the state; that said defendant Corporation, the Indian Territory Illuminating Oil Co., its various officers, directors, agents, servants and employees be enjoined and restrained during the pendency of this action from construction, laying, building or acquiring any pipe line for the transportation of natural gas into, through, along, over or under any public highway, road, bridge, street or alley in this state, and that they be further enjoined from transporting or transmitting natural gas between points within this state; that said defendants
and each of them be further restrained from conducting,
179 carrying on and maintaining its said monopoly, combination
and agreement in restraint of trade and commerce against public policy in the use and production of natural gas within the state, and that it be restrained and enjoined from disposing of, encumbering and hypothecating any of its properties or assets until all fines, penalties and forfeitures adjudged or found to be due to the state shall have been duly satisfied and discharged; and plaintiff prays for such other and further orders, judgments and decrees in the premises as may be proper.

L. P. ROBERTS,
County Attorney of Osage County.
T. J. LEAHY,
ORVILLE T. SMITH,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Osage County, ss:

L. L. Roberts, County Attorney, upon oath says upon information and belief, that the matters and things set forth in the above and foregoing petition are true.

L. F. ROBERTS

Subscribed and sworn to before me this 1st day of December, 1908.

S. R. CRISWELL,
Notary Public, Osage County, Okla.

Com. Ex. Apr. 20, 1912.

180 Endorsed 858. A. W. Lewis vs. Charles N. Haskell, Charles West, John J. Shea, John H. Kane, Frank B. Burford, J. E. Love, J. J. McAlester, J. E. Watson and Pete Hanraty.

Bill of complaint. Filed Feb. 2, 1909. L. G. Disney, clerk U. S. Circuit Court, Eastern District Oklahoma. T. H. Stanford, John J. Jones, Eugene Mackey, Mackey & Scully, Columbia Bank Building.

181 And thereafter on the 1st day of February, 1911, the parties hereto filed stipulation, which is in words and figures as follows:

182 In the Circuit Court of the United States for the Eastern District of Oklahoma.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff.
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNETT MINING COMPANY, Plaintiff.
vs.
CHARLES N. HASKELL et al., Defendants.

No. 858.

A. W. LEWIS, Plaintiff.
vs.
CHARLES N. HASKELL et al., Defendants.

Stipulation.

The parties to all of the above entitled causes both plaintiffs and defendants, hereby stipulate and agree as follows:

1. That said causes be consolidated immediately.

2. The defendant, Charles West, Attorney General of the State of Oklahoma, shall and does hereby file for himself in each of

183 said causes his separate amended answer to the bills of complaint respectively of the complainants therein; said separate amended answer being the same in each case.

3. Each of the other defendants in all the said causes does hereby withdraw his answer heretofore filed in said respective causes.

4. The above consolidated causes of the Kansas Natural Gas Co. vs. C. N. Haskell, et al., No. 856, and Marnet Mining Co., vs. same, No. 857, and A. W. Lewis vs. same, No. 858, shall be and are hereby submitted to the court upon complainant's bill, the said separate amended answer of Attorney General Charles West, this stipulation and complainant's motion for final decree and perpetual injunction, without further argument to the end that an immediate determination thereof and final decree therein may be obtained in this court.

5. In the event the decree of this court is for the plaintiff in said causes, the said defendant, Charles West may be allowed to appeal therefrom to the United States Supreme Court, and any final decision and judgment upon the merits in said causes shall have the same effect upon all said defendants as if all has appealed:

EUGENE MACKEY,
JOHN J. JONES,
E. W. HATCH,
J. P. O'MEARA,
Attorneys for Plaintiffs.

184 C. B. AMES,
W. C. REEVES,
PRESTON C. WEST AND
CHAS. WEST,
Attorneys for Defendants.

PARKER, HATCH & SHEEHAN,
W. C. SCARRITT,
E. H. JONES,
J. A. HINDMAN,
ZEVELY, GIVENS & SMITH,
STANFORD & STANFORD,
Of Counsel.

Endorsed: No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell, et al., Defendants. Marnett Mining Co., Plaintiff, vs. Same, Defendants. A. W. Lewis, Plaintiff, vs. Same, Defendants. Stipulation. United States Circuit Court, Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

185 And thereafter the defendant Charles West in accordance with the stipulation aforesaid, filed answer in #856, being in words and figures as follows:

United States Circuit Court, Eastern District of Oklahoma.

In Equity. #856.

KANSAS NATURAL GAS COMPANY, a Corporation of the State of Delaware and a Citizen of that State, Plaintiff,

vs.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, J. J. McAlester and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

Separate Amended Answer of the Above-named Defendant Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield, to the Bill of the Above-named Plaintiff.

In answer to said complaint, I, Charles West, say as follows:

First. I admit that the plaintiff is now and was during all the times named in the bill a corporation of the State of Delaware and a Citizen thereof.

Second. I admit the truth of the allegations set forth in the second paragraph of the bill.

186 Third. I admit the truth of the allegations set forth in the third paragraph of the bill.

Fourth. I deny that there have been drilled four hundred (400) gas wells in the State of Oklahoma, capable of furnishing over one billion and a half (1,500,000,000) cubic feet of gas per day, and aver that there are in the State of Oklahoma two hundred and seventy-three (273) commercial gas wells, having a total potential volume of 1,225,000,000 cubic feet per day, as hereinafter more fully stated, but deny that said wells last named are capable of furnishing the amount last named from day to day for anything but a very short period as hereinafter more fully stated.

I admit that certain gas wells have been capped and shut in, but deny that the gas therein has thereby been preserved for sale or consumption or otherwise. I deny that the cities and towns and people in and near the gas belt have been adequately supplied with gas, and deny that all persons in said cities desiring to use gas have been or are now being fully supplied and deny that the cities of Oklahoma, which practically might be supplied with gas have been so supplied, and deny that there is any surplus of gas over and above the

187 present demands therefor in said state.

I deny that the total consumption within the State of Okla-

homa will not exceed 50,000,000 cubic feet per day, but aver that the total daily consumption is approximately two hundred fifteen million (215,000,000) cubic feet per day, which amount would be greatly and continually increased except for the fact that the production is not sufficient to supply the demand.

I deny that there are in the County of Washington one hundred fifty (150) wells capable of producing and delivering 750,000,000 cubic feet per day, which are not in use, and deny there are now wells in said State ready for use shut in and not used, by reason of the production of gas in the gas belt exceeding the demand therefor, and aver that the legitimate demands for gas in said State exceed the production therein.

Fifth. I admit that there are plants in the cities named in the fifth paragraph of the Bill equipped for the distribution of natural gas and that some of these plants were originally constructed for the manufacture and distribution of artificial gas, but the distribution of natural gas and artificial gas, is conducted through similar plants with the exception of the manufacturing machinery, and when an artificial gas plant is converted into a natural gas plant, it results in small waste of investment and where the use of natural gas is discontinued the use of artificial gas can be resumed without great
188 expense.

I deny that the inhabitants of said cities are wholly dependent upon natural gas. I admit that the complainant has constructed a system of pipe lines in the various parts of the State of Kansas, and that it has a market for natural gas in said State and in the State of Missouri.

I admit that there is now a shortage of gas in the State of Kansas and aver that said shortage has been largely caused by the transportation of gas by the complainant and others from the gas fields into the larger cities of Kansas and Missouri, and that such transportation has seriously impaired the life and value of the Kansas natural gas supply.

I believe that if the complainant is permitted to extend its pipe lines over the highways into the State of Oklahoma, that the Oklahoma natural gas supply will be exhausted in a very few years, whereas, if it is retained and preserved for the use of the people of the State, it will last for many years longer.

There have been many wells drilled in the State of Oklahoma having an initial capacity of from one to ten million feet per day which have within one to three years declined to a daily capacity of
189 approximately 100,000 feet per day, and I aver that while the present daily capacity of the gas wells of the State is approximately one and a quarter billion feet per day, that the present daily consumption is more than can be safely taken from said wells without rapidly destroying their efficiency and depleting this great natural resource of the State.

I am informed and believe, and upon such information state the fact to be that the entire gas area of the State of Oklahoma is found in oil producing sand and that the experience of all other natural gas fields demonstrates that the gas found in and taken from such

sand is of much shorter duration than that found in a purely gas sand, and that on account of the nature of Oklahoma sand in which gas is found, I believe that if the complainant and others are permitted to pipe gas from such fields to the cities mentioned in the Bill of Complaint, that the field will be exhausted in a very short while.

That the allegation contained herein to the effect that in Oklahoma gas and oil are found in the same sand, is subject to this exception:

That in the Copan Field gas is found 150 to 170 feet below the oil sand, and in the Hogshooter Field gas is found 120 feet below the oil sand. That if all the wells which are drilled to the gas sand were cased below the oil sand, or packed, there would be no drain-
190 age from the gas sand into the oil wells and thence out into the air, by reason of being adjacent to oil development, but that many wells in those fields are cased above the oil sand and have no packer below it so that the gas from the lower strata escapes into the oil producing sand and eventually into the air, and the effect and consequence is as if oil and gas were in the same sands.

Also, that it is possible that in other places, for a very limited extent, there may be a gas sand that does not produce oil, but if the same occurs it is in the immediate *neighborhood* to sands that do produce oil. That the only known instance at the present time is in Section- 24 and 25 in the Osage Nation, where Messrs. Miler, Rider & Black have drilled a well to the Bartlesville sand which is an oil producing sand, but in that case the well turned out to be not an oil well but a large gas well. A very short distance from this well a well was drilled through the Bartlesville sand to the Mississippi Lime strata; that the Mississippi Lime strata is generally regarded as a strictly gas sand and not an oil sand, yet in this instance last named, the well that passed through the Bartlesville Oil sand to the Mississippi Lime sand, turned out to be an oil well and not a gas well, and several more wells in the same locality were drilled with the same result, so that in theory the Mississippi Lime is a gas and not an oil sand and in theory the sand in a portion of the Copan Field
191 and the Hogshooter Field is gas and not oil; but in practice, actually and in truth, it is true that all of the sand in Oklahoma which produces gas at the same time produces oil, and connects or is adjacent to sands producing oil.

I am further informed and believe and upon said information state the fact to be, that while the natural gas of the State of Oklahoma is found in a gas and oil producing sand, extending underneath large contiguous areas of land and that every well reaching into said gas sand takes from this unbroken area and thereby diminishes the producing capacity of any other well and of the entire field and that if the complainant is allowed to transport gas from such fields through the new pipe lines constructed over and across the highways of the State, that it will thereby greatly damage and injure the entire field which it reaches and injuriously affect and take the property of all other owners of gas in said field, and that the act of the legislature of the State of Oklahoma alleged by the bill to be unconstitutional, was an effort on the part of the Legislature of the

State to preserve the natural gas field of the State from distributive waste.

That all cities in Oklahoma which by reason of their proximity to the gas fields should reasonably be furnished with natural gas, are not now supplied with such gas and will never be so supplied
192 if plaintiff is allowed to transport gas from Oklahoma without regulation by laws of Oklahoma; that the population of Oklahoma is now approximately 1,750,000 and its population is growing more rapidly than that of any other State in the Union, that it has a large number of rapidly growing cities and towns and that all kinds of industry is developing with great speed in Oklahoma. That because of its generally prairie character said State is entirely without a domestic fuel except coal and natural gas and that its supply of coal is growing rapidly more costly to produce because of the peculiar nature of the Oklahoma mines—their great depth, bad floors and ceilings, bad inclines, great dryness and presence of noxious and dangerous gases; that the petroleum oil produced in the State is practically all of it transported outside the State before being refined, and that substantially the only natural practical usable fuel both for domestic and industrial use is natural gas. That many of the most promising cities, such as Enid, El Reno, Lawton, Chickasha, McAlester, as well as many scores of smaller places capable, willing and anxious to obtain and use natural gas, are now without the same altogether. That in case the kind of pipe line proposed by plaintiff is constructed no further development of the natural gas business in the State so far as the supply of cities not now ob-
193 taining the same, will in reason be accomplished, and because of the relative smallness of the present lines to Oklahoma City, Guthrie, and Shawnee compared to plaintiff's proposed lines, will in the immediate future leave said cities without natural gas. That because plaintiff may outside the State of Oklahoma erect enormous pumping stations which *they are* now actually in the process of constructing, they might reasonably and would inevitably render entirely useless all the present lines in Oklahoma, and take away from the towns and cities of Oklahoma the entire practical use of their sole and natural fuel, because when gas is removed by the limited, prudent and natural rock pressure the nature and formation of the gas and oil sand is not radically changed, but if large pumps to pump out the wells out of proportion to the rock pressure are used, as are now actually threatened by the plaintiff, the gas and oil sand is actually broken down as though shot with dynamite or other violence, and the salt water thereunder, always to be found, at once drowns out the wells, where rock pressure has been too greatly or rapidly decreased. That the use of the highways is a portion of the public property and the same should be confined to those who supply all alike who may seek to be served, that because of its nature and extent, and because the enormous amount of capital needed to make practical investments tends to create monopolies, the
194 business of gas transportation is a public business in interstate trade, over which Congress has never legislated, and interstate trade, and that to permit plaintiff to carry out its said attempt

and intent to monopolize the natural gas of the State and transport it away without regulation by the State laws over and across the State's highways, without the State's consent would be to devote public property to private and exclusive use against the principles of the Constitution of this State and the United States, and deprive the intending purchasers of natural gas in this State from all supply whatsoever.

The developed gas belt of the State lies principally within Osage, Washington, Nowata and Rogers Counties.

The city of Bartlesville and the towns of the northern portion of the State, adjacent to the gas belt are now supplied from the gas found in the northern part of said gas area, but the lines gathering the same are continually being extended southerly; that the city of Tulsa and adjacent cities are supplied from the central portion of said field, and that its gathering lines are likewise continually from time to time being extended both north and south.

That the Cities of Muskogee, Oklahoma City, Guthrie, Shawnee, and other towns situated in the center of the State of Oklahoma and situated south, southeast and southwest of said gas fields, are being supplied from the southern portion of said fields, but the lines supplying the same are continually and from time to time extended northerly.

195 Respondent further avers that there are several other pipe lines companies seeking to carry on business in the State in the same manner as desired by complainant and if it is determined that the right exists in the complainant such determination will likewise apply to all other foreign corporations seeking to engage in a like business and that the complainant and such other foreign corporations as extend their lines into the State will commence taking gas in the northern and northeastern part of said field, and as they exhaust the wells in their immediate vicinity will extend their lines in a southerly and southwesterly direction, while the pipe lines now supplying the cities and towns of the State, as they exhaust the wells closest to them will extend their lines as above described so that at once, or in a very short time, the lines of the complainant and the other foreign corporations, and lines now existing in the State will meet in the center of the field, and result in the speedy destruction of the supply of gas in the State, and the lines now supplying the cities and towns of the State, by reason of these facts, will extend their lines further and will have the value of their present property destroyed.

Sixth. I admit the allegations in paragraph numbered Sixth of the Bill of Complainant.

196 Seventh. I deny the allegations set forth in paragraph numbered Seventh of the Bill of Complainant.

Eighth. I admit the truth of the allegations set forth in the Eighth paragraph of the Bill.

Ninth. I admit the truth of the allegations set forth in the Ninth paragraph of the Bill.

Tenth. I admit the truth of the allegations set forth in the Tenth paragraph of the Bill.

Eleventh. As to the eleventh paragraph of the Bill, this defend-

ant avers that he is not informed that the purposes and intents of the Plaintiff are other than those alleged by it; but admits that the plaintiff is not endeavoring to supply the demand for natural gas in the State of Oklahoma.

Twelfth. I admit the truth of the allegations set forth in the Twelfth paragraph of the Bill.

Thirteenth. This defendant admits that the transportation of natural gas by means of pipe lines has been and is now extensively carried on in the States named in the Thirteenth paragraph of the Bill, but he is not informed as to the number of mileage of said pipe lines. He admits that the same has grown into a great industry and admits that millions of dollars are invested therein; and he admits that the transportation by pipe lines is the only method of transportation now usually availed of, but this fact is due to the cheapness of transportation by such means as compared to any other kind
197 of transportation and the competition is thus restricted at this time to transportation of natural gas by pipe lines in that transportation by any other means at the present rate of transportation would not in most instances place the commodity in the market at a price sufficiently low to mean competition with coal, oil and other fuel products, and that the restriction to pipe line is therefore caused by the cheap price at which oil and coal *is* now upon the market, as well as the cheapness with which natural gas may be transported from other places to any market, and this respondent respectfully avers that the highways of Oklahoma are open to the transportation of natural gas by any means or method which does not make a permanent appropriation of any part of the highways by placing a plant in the same and that nothing in the laws of Oklahoma, nor the acts of this respondent nor purposed by him in any way interfer-s or hinders the transportation of natural gas by any proper highway use without placing a plant in the same.

Fourteenth. This defendant admits that there is now laid, maintained and operated in the State of Oklahoma, natural gas pipe lines, the extended mileage of which is unknown to the respondent, but they are in daily use for the transportation of gas with- the State. He admits that said lines in very many instances and often at great length, run over, along and across the public highways of the
198 State; that the same are operated without hurt, hindrance, damage or inconvenience to the traveling public or to abutting property owners, but he denies that they were laid with the knowledge and consent of the defendant and avers that they were laid and operated according to the laws in force at the time and pursuant to the laws of the State of Oklahoma, and that to the knowledge of defendant, there is one line daily operated for the transportation of natural gas from the State of Oklahoma into the State of Kansas, to-wit: the line owned by Charles Owen transporting gas from a portion of Washington County to the State of Kansas, and this respondent avers that the same was laid before the 16th day of November, 1907; and after this respondent became Attorney General of the State of Oklahoma on the 16th day of November, 1907, that he endeavored by proper suit and action to require the said pipe line to be maintained and

operated in accordance with the laws of Oklahoma, and that by a proper compromise and agreement entered in said cause, any further laying, operating or maintenance of said line in the state of Oklahoma was discontinued, except that the then existing business of said line was agreed and allowed to be continued as it then sought, because of the claim made by the said Charles Owen in said action; that the said line was rightfully laid and operated under authority received before the 16th day of November, 1907, from the government of the United States in what was then the Indian Territory, and that
199 said agreement was entered in said cause because of the fact that it was then a moot question undecided by the courts whether a gas pipe line laid before Statehood, under authority from the Secretary of the Interior might thereafter be operative in the State of Oklahoma, and this respondent denies that he has ever consented to the violation of any of the laws of the State of Oklahoma, with reference to gas pipe lines.

I admit that a branch from the line running to Oklahoma City was constructed to Shawnee, and a like branch from said line to Guthrie since November 16th, 1907, but aver that they were so constructed pursuant to the laws then in force in the State, so far as I am informed.

Fifteenth. This respondent avers that he has no information as to the purposes of the plaintiff in the construction of its line except that it proposes to lay its pipe line to a depth of three feet or more under the surface of any highway it may cross.

Sixteenth. This respondent admits that by virtue of his office under the constitution and laws of the State of Oklahoma, he is clothed with power and authority, and charged with the duty of executing and enforcing the laws of the State in the protection of public rights, and particularly in respect to the execution and enforcement of the provisions of Chapter 67 of the Session
200 Laws of the State enacted in 1907 and 1908, and other acts amendatory and supplementary thereto, in so far as the same must or shall be done by litigation in which the State is interested, but as to his duties, that they rest solely upon himself and are not upon him in connection with or controlled by any other officer whatsoever, but he denies that as such officer or otherwise, he has assumed or undertaken to execute or enforce said act by force of arms or otherwise, except as herein stated; and further this defendant denies that it is his purpose and intent, either avowed or otherwise, to prevent the transportation of natural gas in Oklahoma beyond the limits of the State; but he avers that he intends acting under his duty as Attorney General to prevent solely by actions in competent courts, the laying or constructing or operation of gas pipe lines, in, on, under, across or along the highways of the State by the complainant or any other person not authorized so to do by the laws of Oklahoma; and this defendant denies the allegations set forth in paragraphs *a*, *b*, *c*, and *e* of the Sixteenth paragraph of the Bill, and as to the paragraph *d* therein contained, he admits that he as such officer caused a pipe line owned and operated by one Charles Owen to be put into the hands of a receiver and admits that the same was

done through an action commenced in the courts of Washington, County, Oklahoma, by the filing of a petition, and that Ex-
201 hibit "F" is a true copy thereof. He admits that the stipulation was entered into as shown by Exhibit "B" and that a judgment and order was entered as therein shown, but he denies that said pipe line was created and used wholly for the transportation and carriage of natural gas from Oklahoma to Kansas and avers that said pipe line was being used for the transportation of natural gas from Oklahoma to Kansas and avers that said pipe line was being used for the transportation of natural gas both from Oklahoma to Kansas and between different points in the State of Oklahoma and he denies that the petition was wickedly, cunningly and fraudulently drawn to conceal the fact that said line was engaged in interstate commerce and he alleges that said petition was candidly and honestly framed under the Statutes of the State of Oklahoma dealing with nuisances and their abatement.

He admits that he opposed the removal of said cause from the said court and avers upon argument that the state court refused to remove the cause.

He admits that in the federal court he moved to remand the same to the State court and avers that the federal court properly and rightfully remanded the same.

He denies that there were any vexatious delays and denies that he used any improper means to compel the decision given in said cause, and admits that defendants did consent to a decree entered in said cause on the 18th day of April, 1908, but by the terms of said decree the defendants were allowed to continue to prosecute all the rights at that time in existence in their possession, upon consent that they should not extend, expand or increase the same,
202 and that the effect of said decision was to hold the business therein in statu quo and to hold the rights of the state in the same; that said consent was gained honestly, openly and without any fraud, for the best interest of all the parties in the action.

That this defendant denies any other matter stated in said paragraph of paragraph sixteenth of said bill, except as above stated.

Seventeenth. This defendant denies each and every statement made in the Seventeenth paragraph of said Bill; but he intends to act as averred in the Sixteenth paragraph of this answer.

Eighteenth. This defendant denies any knowledge of the matters set out in the Eighteenth paragraph of the bill.

Nineteenth. This defendant denies each and every statement contained in the Nineteenth paragraph of the bill, except as to the amount in controversy, which he admits.

Twentieth. This defendant says that in that portion of the state where natural gas is produced, that a large number of persons formerly members of Indian tribes hold allotments in severalty and that in many instances such premises are at this time inalienable and that the Secretary of the Interior occupies towards them the office of guardian, but that rapidly the condition of said lands *are* becoming alienable and the guardianship of the Secretary of the Interior is

being more and more restricted and his duties decreasing and
203 that at this time there is a larger proportion of lands that are alienable that belong to other citizens of the United States than inalienable and belonging to members of Indian Tribes who can not dispose of the same.

Twenty-first. This defendant admits the statements made in the twenty-first paragraph of the bill.

Wherefore, this defendant submits that he has a right to and a duty to bring such actions as the valid laws of the State require; that he has neither done or intended any trespass or injury upon the plaintiff and that the injunction awarded against him by this Honorable Court ought to be dissolved and the Bill ought to be dismissed with costs.

CHARLES WEST,
Pro Se.

Endorsed: No. 356. Kansas Natural Gas Company vs. Charles N. Haskell et al. Separate Amended Answer of Charles West. United States Circuit Court, Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

204 And on the same day the defendant Charles West in accordance with stipulation aforesaid, filed his answer in cause #857, The Marnett Mining Co., vs. Charles N. Haskell et al. Said Answer is in words and figures as follows:

205 United States Circuit Court, Eastern District of Oklahoma.

No. 857.

THE MARNETT MINING COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

Separate Amended Answer of the Above-named Defendant, Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield, to the Bill of the Above-named Plaintiff.

In answer to said complaint, I, Charles West, say as follows:

First. I admit that the plaintiff is now and was during all the times named in the bill a corporation of the state of Delaware and a Citizen thereof.

Second. I admit the truth of the allegations set forth in the second paragraph of the Bill.

206 Third. I admit the truth of the allegations set forth in the third paragraph of the bill.

Fourth. I deny that there have been drilled four hundred (400) gas wells in the State of Oklahoma, capable of furnishing over one billion and a half (1,500,000,000) cubic feet of gas per day, and aver that there are in the State of Oklahoma two hundred and seventy three (273) commercial gas wells, having a total potential

volume of 1,225,000,000 cubic feet per day, as hereinafter more fully stated, but deny that said wells last named are capable of furnishing the amount last named from day to day for anything but a very short period as hereinafter more fully stated.

I admit that certain gas wells have been capped and shut in, but deny that the gas therein has thereby been preserved for sale or consumption or otherwise. I deny that the cities and towns and people in and near the gas belt have been adequately supplied with gas, and deny that all persons in said cities desiring to use gas have been or are now being fully supplied and deny that the cities of Oklahoma, which practically might be supplied with gas have been so supplied, and deny that there is any surplus of gas over and
207 above the present demands therefor in said state

I deny that the total consumption within the State of Oklahoma will not exceed 50,000,000 cubic feet per day, but aver that the total daily consumption is approximately two hundred fifteen million (215,000,000) cubic feet per day, which amount would be greatly and continually increased except for the fact that the production is not sufficient to supply the demand.

I deny that there are in the County of Washington one hundred fifty (150) wells capable of producing and delivering 750,000,000 cubic feet per day, which are not in use, and deny there are now wells in said State ready for use shut in and not used, by reason of the production of gas in the gas belt exceeding the demand therefor and aver that the legitimate demands for gas in said State exceed the production therein.

Fifth. I admit that there are plants in the cities named in the fifth paragraph of the Bill equipped for the distribution of natural gas and that some of those plants were originally constructed for the manufacture and distribution of artificial gas, but the distribution of natural gas and artificial gas, is conducted through similar plants with the exception of the manufacturing machinery, and when an artificial gas plant is converted into a natural gas plant, it results in small waste of investment and where the use of natural gas
208 is discontinued the use of artificial gas can be resumed without great expense.

I deny that the inhabitants of said cities are wholly dependent upon natural gas. I admit that the complainant has constructed a system of pipe lines in the various parts of the State of Kansas, and that it has a market for natural gas in said State and in the State Missouri.

I admit that there is now a shortage of gas in the State of Kansas and aver that said shortage has been largely caused by the transportation of gas by the complainant and others from the gas fields into the larger cities of Kansas and Missouri, and that such transportation has seriously impaired the life and value of the Kansas natural gas supply.

I believe that if the complainant is permitted to extend its pipe lines over the highways into the State of Oklahoma, that the Oklahoma natural gas supply will be exhausted in a very few years.

whereas, if it is retained and preserved for the use of the people of the State, it will last for many years longer.

There have been many wells drilled in the State of Oklahoma having an initial capacity of from one to ten mil-ion feet per day which have within one to three years declined to a daily
209 capacity of approximately 100,000 feet per day, and I aver that while the present daily capacity of the gas wells of the State is approximately one and a quarter billion feet per day, that the present daily consumption is more than can be safely taken from said wells without rapidly destroying their efficiency and depleting this great natural resource of the State.

I am informed and believe, and upon such information state the fact to be that the entire gas area of the State of Oklahoma is found in oil producing sand and that the experience of all other natural gas fields demonstrates that the gas found in and taken from such sand is of much shorter duration than that found in a purely gas sand, and that on account of the nature of Oklahoma sand in which gas is found, I believe that if the complainant and others are permitted to pipe gas from such fields to the cities mentioned in the Bill of Complaint, that the field will be exhausted in a very short while.

That the allegation contained herein to the effect that in Oklahoma gas and oil are found in the same sand, is subject to this exception:

That in the Copan Field gas is found 150 to 170 feet below the oil sand, and in the Hogshooter Field gas is found 120 feet below the oil sand. That if all the wells which are drilled to the gas sand were case- below the oil sand, or packed, there would be no drainage
210 from the gas sand into the oil wells and thence out into the air, by reason of being adjacent to oil development, but that many wells in those fields are cased above the oil sand and have no packer below it so that the gas from the lower strata escapes into the oil producing sand and eventually into the air, and the effect and consequence is as if oil and gas were in the same sands.

Also, that it is possible that in other places, for a very limited extent, there may be a gas sand that does not produce oil, but if the same occurs it is in the immediate neighborhood to sands that do produce oil. That the only known instance at the present time is in Section- 2 4and 25 in the Osage Nation, where Messrs. Miller, Rider & Black have drilled a well to the Bartlesville sand which is an oil producing sand, but in that case the well turned out to be not an oil well but a large gas well. A very short distance from this well a well was drilled through the Bartlesville sand to the Mississippi Lime strata; that the Mississippi Lime strata is generally regarded as a strictly gas sand and not an oil sand, yet in this instance last named, the well that passed through the Bartlesville Oil sand to the Mississippi Lime sand, turned out to be an oil well and not a gas well, and several more wells in the same locality were drilled with the same result, so that in theory the Mississippi Lime is a gas and not an oil sand, and in theory the sand in a portion of the Copan
211 Field and the Hogshooter Field is gas and not oil; but in practice, actually and in truth, it is true that all of the sand

in Oklahoma which produces gas at the same time produces oil, and connects or is adjacent to sand- producing oil.

I am further informed and believe and upon said information state the fact to be, that while the natural gas of the State of Oklahoma is found in a gas and oil producing sand, extending underneath large contiguous areas of land and that every well reaching into said gas sand takes from this unbroken area and thereby diminishes the producing capacity of any other well and of the entire field and that if the complainant is allowed to transport gas from such fields through the new pipe lines constructed over and across the highways of the State, that it will thereby greatly damage and injure the entire field which is reached and injuriously affect and take the property of all other owners of gas in said field, and that the act of the legislature of the State of Oklahoma alleged by the bill to be unconstitutional, was an *effect* on the part of the Legislature of the State to preserve the natural gas field of the State from distributive waste.

That all cities in Oklahoma which by reason of their proximity to the gas fields should reasonably be furnished with natural gas, are not now supplied with such gas and will never be so supplied
212 if the plaintiff is allowed to transport gas from Oklahoma without regulation by laws of Oklahoma; that the population of Oklahoma is now approximately 1,750,000 and its population is growing more rapidly than that of any other State in the Union, that it has a large number of rapidly growing cities and towns and that all kinds of industry is developing with great speed in Oklahoma. That because of its generally prairie character said State is entirely without a domestic fuel except coal and natural gas and that its supply of coal is growing rapidly more costly to produce because of the peculiar nature of the Oklahoma mines—their great depth, bad floors and ceilings, bad inclines, great dryness and presence of noxious and dangerous gases; that the petroleum oil produced in the state, is practically all of it transported outside the State before being refined, and that substantially the only natural practical usable fuel both for domestic and industrial use is natural gas. That many of the most promising cities, such as Enid, El Reno, Lawton, Chickasha, McAlester, as well as many scores of smaller places capable, willing and anxious to obtain and use natural gas, are now without the same altogether. That in case the kind of pipe lines proposed by plaintiff is constructed no further development of the natural gas business in the State so far as the supply of cities not now obtaining the same, will in reason be accom-
213 plished, and because of the relative smallness of the present lines to Oklahoma City, Guthrie, and Shawnee compared to plaintiff's proposed lines, will in the immediately future leave said cities without natural gas. That because plaintiff may outside the State of Oklahoma erect enormous pumping stations which *they are* now actually in the process of constructing they might reasonably and would inevitably render entirely useless all the present lines of Oklahoma, and take away from the towns and cities of Oklahoma the entire practical use of their sole and natural fuel, because when

gas is removed by the limited, prudent and natural rock pressure the nature and formation of the gas and oil sand is not radically changed, but if large pumps to pump out the wells out of proportion to the rock pressure are used, as are now actually threatened by the plaintiff the gas and oil sand is actually broken down as though shot with dynamite or other violence, and the salt water thereunder, always to be found, at once drowns out the wells, where rock pressure has been too greatly or rapidly decreased. That the use of the highways is a portion of the public property and the same should be confined to those who supply all alike who may seek to be served, that because of its nature and extent, and because the enormous amount of capital needed to make practical investments tends to create monopolies, the business of gas transportation is a public business in interstate trade, over which Congress has never legislated, and inter-state trade, and that to permit plaintiff to carry out its said attempt and intent to monopolize the natural gas of the State and transport it away without regulation by the State laws over and across the State's highways, without the State's consent would be to devote public property to private and exclusive use against the principles of the Constitution of this State and the United States, and deprive the intending purchasers of natural gas in this State from all supply whatsoever.

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The developed gas belt of the State lies principally within Osage, Washington, Nowata and Rogers Counties.

The City of Bartlesville and the towns of the northern portion of the State, adjacent to the gas belt are now supplied from the gas found in the northern part of said gas area, but the lines gathering the same are continually being extended southerly; that the City of Tulsa and adjacent cities are supplied from the central portion of said field, and that its gathering lines are likewise continually from time to time being extended both north and south.

That the Cities of Muskogee, Oklahoma City, Guthrie, Shawnee, and other towns situated in the center of the State of Oklahoma and situated south, southeast and southwest of said gas fields, are being supplied from the southern portion of said fields, but the lines supplying the same are continually and from time to time extended northerly.

215

Respondent further avers that there are several other pipe lines companies seeking to carry on business in the State in the same manner as desired by complainant and if it is determined that the right exists in the complainant such determined will likewise apply to all other foreign corporations seeking to engage in a like business and that the complainant and such other foreign corporations as extend their lines into the State will commence taking gas in the northern and northeastern part of said field, and as they exhaust the wells in their immediate vicinity will extend their lines in a southerly and southwesterly direction, while the pipe lines now supplying the cities and towns of the State, as they exhaust the wells closest to them will extend their lines as above described so that at once or in a very short time, the lines of the complainant and the other foreign corporations, and lines now existing in the State will meet in the center

of the field, and result in the speedy destruction of the supply of gas in the State, and the lines now supplying the cities and towns of the State, by reason of these facts, will extend their lines further and will have the value of their present property destroyed.

Sixth. I admit the allegations in paragraph numbered Sixth of the Bill of Complainant.

216 Seventh. I deny the allegations set forth in paragraph numbered Seventh of the Bill of Complainant.

Eighth. I admit the truth of the allegations set forth in the Eighth paragraph of the Bill.

Ninth. I admit the truth of the allegations set forth in the Nonth paragraph of the Bill.

Tenth. I admit the truth of the allegations set forth in the Tenth paragraph of the Bill.

Eleventh. As to the eleventh paragraph of the Bill, this defendant avers that he is not informed that the purposes and intents of the Plaintiff are other than those alleged by it; but admits that the plaintiff is not endeavoring to supply the demand for natural gas in the State of Oklahoma.

Twelfth. I admit the truth of the allegations set forth in the Twelfth paragraph of the Bill.

Thirteenth. This defendant admits that the transportation of natural gas by means of pipe lines has been and is now extensively carried on in the States named in the Thirteenth paragraph of the Bill, but he is not informed as to the number of mileage of said pipe lines. He admits that the same has grown into a great industry and admits that millions of dollars are invested therein; and he admits that the transportation by pipe lines is the only method of transportation now usually availed of, but this fact is due to the cheapness of transportation by such means as compared to

217 any other kind of transportation and the competition is thus restricted at this time to transportation of natural gas by pipe lines in that transportation by any other means at the present rate of transportation would not in most instances place the commodity in the market at a price sufficiently low to mean competition with coal, oil and other fuel products, and that the restriction to pipe line is therefore caused by the cheap price at which oil and coal is now upon the market, as well as the cheapness with which natural gas may be transported from other places to any market, and this respondent respectfully avers that the highways of Oklahoma are open to the transportation of natural gas by any means or method which does not make a permanent appropriation of any part of the highways by placing a plant in the same and that nothing in the laws of Oklahoma, nor the acts of this respondent nor purposed by him in any way interferes or hinders the transportation of natural gas by any proper highway use without placing a plant in the same.

Fourteenth. This defendant admits that there is now laid, maintained and operated in the State of Oklahoma, natural gas pipe lines, the extended mileage of which is unknown to the respondent, but

they are in daily use for the transportation of gas with- the State. He admits that said lines in very many instances and often at great length, run over, along and across the public highways of the State; that the same are operated without hurt, hindrance,
218 damage or inconvenience to the traveling public or to abutting property owners, but he denies that they were laid with the knowledge and consent of the defendant and avers that they were laid and operated according to the laws in force at the time and pursuant to the laws of the state of Oklahoma, and that to the knowledge of defendant, there is one line daily operated for the transportation of natural gas from the State of Oklahoma into the State of Kansas, to-wit: the line owner by Charles Owne transporting gas from a portion of Washington County to the State of Kansas, and this respondent avers that the same was laid before the 16th day of November, 1907; and after this respondent became Attorney General of the State of Oklahoma on the 16th day of November, 1907, that he endeavored by proper suit and action to require the said pipe line to be maintained and operated in accordance with the laws of Oklahoma, and that by a proper compromise and agreement entered in said causes, any further laying, operating or maintenance of said line in the state of Oklahoma was discontinued, except that the then existing business of said line was agreed and allowed to be continued as it then sought, because of the claim made by the said Charles Owen in said action; that the said line was rightfully laid and operated under authority received before the 16th day of November, 1907, from the government of the United States in what was then the Indian Territory, and that said agreement was entered in said cause because of the fact that it
219 was then a moot question undecided by the courts whether a gas pipe line laid before Statehood, under authority from the Secretary of the Interior might thereafter be operative in the State of Oklahoma, and this respondent denies that he has ever consented to the violation of any of the laws of the State of Oklahoma, with reference to gas pipe lines.

I admit that a branch from the line running to Oklahoma City was constructed to Shawnee, and a like branch from said line to Guthrie since November 16th, 1907, but aver that they were so constructed pursuant to the laws then in force in the State, so far as I am informed.

Fifteenth. This respondent avers that he has no information as to the purposes of the plaintiff in the construction of its line except that it proposes to lay its pipe line to a depth of three feet or more under the surface of any highway it may cross.

Sixteenth. This respondent admits that by virtue of his office under the constitution and laws of the State of Oklahoma, he is clothed with power and authority, and charged with the duty of executing and enforcing the laws of the State in the protection of public rights, and particularly in respect to the execution and enforcement of the provisions of Chapter 67 of the Session Laws of the State
220 enacted in 1907 and 1908, and other acts amendatory and supplementary thereto, in so far as the same must or shall

be done by litigation in which the State is interested, but as to his duties, that they rest solely upon himself and are not upon him in connection with or controlled by any other officer whatsoever, but he denies that as such officer or otherwise, he has assumed or undertaken to execute or enforce said act by force of arms or otherwise, except as herein stated; and further this defendant denies that it is his purpose and intent, either avowed or otherwise, to prevent the transportation of natural gas in Oklahoma beyond the limits of the State; but he avers that he intends acting under his duty as Attorney General to prevent solely by actions in competent courts, the laying or constructing or operation of gas pipe lines, in, on, under, across or along the highways of the State by the complainant or any other person not authorized so to do by the laws of Oklahoma; and this defendant denies the allegations set forth in paragraphs *a*, *b*, *c* and *e* of the Sixteenth paragraph of the Bill, and as to the paragraph *d* therein contained, he admits that he as such officer caused a pipe line owned and operated by one Charles Owen to be put into the hands of a receiver and admits that the same was done through an action commenced in the courts of Washington, County, Oklahoma, by the filing of a petition, and the
221 Exhibit "F" is a true copy thereof. He admits that the stipulation was entered into as shown by Exhibit "B" and that a judgment and order was entered as therein shown, but he denies that said pipe line was created and used wholly for the transportation and carriage of natural gas from Oklahoma to Kansas and avers that said pipe line was being used for the transportation of natural gas from Oklahoma to Kansas and avers that said pipe line was being used for the transportation of natural gas both from Oklahoma to Kansas and between different points in the State of Oklahoma and he denies that the petition was wickedly, cunningly and fraudulently drawn to conceal the fact that said line was engaged in interstate commerce and he alleges that said petition was candidly and honestly framed under the Statutes of the State of Oklahoma dealing with nuisances and their abatement.

He admits that he opposed the removal of said cause from the said court and avers upon argument that the state court refused to remove the cause.

He admits that in the federal court he moved to remand the same to the State court and avers that the federal court properly and rightfully remanded the same.

He denies that there were any vexatious delays and denies that he used any improper means to compel the decision given in said cause, and admits that defendants did consent to a decree entered in said cause on the 18th day of April, 1908, but by the terms of said decree the defendants were allowed to continue to prosecute all the rights at that time in existence in their possession, upon consent that they should not extend, expand or increase the
222 same, and that the effect of said decision was to hold the business therein in statu quo and to hold the rights of the state in the same; that said consent was gained honestly, openly

and without any fraud, for the best interests of all the parties in the action.

That this defendant denies any other matter stated in said paragraph of paragraph sixteenth of said bill, except as above stated.

Seventeenth. This defendant denies each and every statement made in the Seventeenth paragraph of said Bill; but he intends to act as averred in the Sixteenth paragraph of this answer.

Eighteenth. This defendant denies any knowledge of the matters set out in the Eighteenth paragraph of the bill.

Nineteenth. This defendant denies each and every statement contained in the Nineteenth paragraph of the bill, except as to the amount in controversy, which he admits.

Twentieth. This defendant says that in that portion of the state where natural gas is produced, that a large number of persons formerly members of Indian tribes hold allotments in severalty and that in many instances such premises are at this time inalienable and that the Secretary of the Interior occupies towards them the office of guardian, but that rapidly the condition of said lands are becoming alienable and the guardianship of the Secretary of the Interior is being more and more restricted and his duties decreasing and that at this time there is a larger proportion of
223 lands that are alienable that belong to other citizens of the United States than inalienable and belonging to members of Indian Tribes who can not dispose of the same.

Twenty-first. This defendant admits the statements made in the twenty-first paragraph of the bill.

Wherefore, this defendant submits that he has a right to and a duty to bring such actions as the valid laws of the State require; that he has neither done or intended any trespass or injury upon the plaintiff and that the injunction awarded against him by this Honorable Court ought to be dissolved and the Bill ought to be dismissed with costs.

CHARLES WEST,
Pro Se.

Endorsed: No. 857. The Marnet Mining Company vs. Charles N. Haskell et al. Separate Amended Answer of Charles West. United States Circuit Court, Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

224 And on the same day the defendant Charles West in accordance with stipulation aforesaid, filed his answer in cause #858, A. W. Lewis, Plaintiff vs. Charles N. Haskell, et al. Said answer is in words and figures as follows:

225 United States Circuit Court, Eastern District of Oklahoma.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

Separate Amended Answer of the Above-named Defendant, Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield, to the Bill of the Above-named Plaintiff.

In answer to said complaint, I, Charles West, say as follows:

First. I admit that the plaintiff is now and was during all the time named in the bill a corporation of the State of Delaware and a citizen thereof.

Second. I admit the truth of the allegations set forth in the second paragraph of the Bill.

226 Third. I admit the truth of the allegations set forth in the third paragraph of the bill.

Fourth. I deny that there have been drilled four hundred (400) gas wells in the State of Oklahoma, capable of furnishing over one billion and a half (1,500,000,000) cubic feet of gas per day, and aver that there are in the State of Oklahoma two hundred and seventy-three (273) commercial gas wells, having a total potential volume of 1,225,000,000 cubic feet per day, as hereinafter more fully stated, but deny that said wells last named are capable of furnishing the amount last named from day to day for anything but a very short period as hereinafter more fully stated.

I admit that certain gas wells have been capped and shut in, but deny that the gas therein has thereby been preserved for sale or consumption or otherwise. I deny that the cities and towns and people in and near the gas belt have been adequately supplied with gas, and deny that all persons in said cities desiring to use gas have been or are now being fully supplied and deny that the cities of Oklahoma, which practically might be supplied with gas have been so supplied, and deny that there is any surplus of gas over

227 and above the present demands therefor in said state.

I deny that the total consumption within the State of Oklahoma will not exceed 50,000,000 cubic feet per day, but aver that the total daily consumption is approximately two hundred fifteen million (215,000,000) cubic feet per day, which amount would be greatly and continually increased except for the fact that the production is not sufficient to supply the demand.

I deny that there are in the County of Washington one hundred fifty (150) wells capable of producing and delivering 750,000,000 cubic feet per day, which are not in use, and deny there are now wells in said State ready for use shut in and not used, by reason of the production of gas in the gas belt exceeding the demand therefor

and aver that the legitimate demands for gas in said State exceed the production therein.

Fifth. I admit that there are plants in the cities named in the fifth paragraph of the Bill equipped for the distribution of natural gas and that some of those plants were originally constructed for the manufacture and distribution of artificial gas, but the distribution of natural gas and artificial gas, is conducted through similar plants with the exception of the manufacturing machinery, and when an artificial gas plant is converted into a natural gas plant, it results in small waste of investment and where the use of
228 natural gas is discontinued the use of artificial gas can be resumed without great expense.

I deny that the inhabitants of said cities are wholly dependent upon natural gas. I admit that the complainant has constructed a system of pipe lines in the various parts of the State of Kansas, and that it has a market for natural gas in said State and in the State
— Missouri.

I admit that there is now a shortage of gas in the State of Kansas and aver that said shortage has been largely caused by the transportation of gas by the complainant and others from the gas fields into the larger cities of Kansas and Missouri, and that such transportation has seriously impaired the life and value of the Kansas natural gas supply.

I believe that if the complainant is permitted to extend its pipe lines over the highways into the State of Oklahoma, that the Oklahoma natural gas supply will be exhausted in a very few years, whereas, if it is retained and preserved for the use of the people of the State, it will last for many years longer.

There have been many wells drilled in the State of Oklahoma having an initial capacity of from one to ten million feet per day which have within one to three years declined to a daily ca-
229 pacity of approximately 100,000 feet per day, and I aver that while the present daily capacity of the gas wells of the State is approximately one and a quarter billion feet per day, that the present daily consumption is more than can be safely taken from said wells without rapidly destroying their efficiency and depleting this great natural resource of the State.

I am informed and believe, and upon such information state the fact to be that the entire gas area of the State of Oklahoma is found in oil producing sand and that the experience of all other natural gas fields demonstrates that the gas found in and taken from such sand is of much shorter duration than that found in a purely gas sand, and that on account of the nature of Oklahoma sand in which gas is found, I believe that if the complainant and others are permitted to pipe gas from such fields to the cities mentioned in the Bill of Complaint, that the field will be exhausted in a very short while.

That the allegation contained herein to the effect that in Oklahoma gas and oil are found in the same sand, is subject to this exception:

That in the Copan Field gas is found 150 to 170 feet below the oil sand, and in the Hogshooter Field gas is found 120 feet below the oil

sand. That if all the wells which are drilled to the gas sand were
case- below the oil sand, or packed, there would be no drainage
230 from the gas sand into the oil wells and th-nce out into the
air, by reason of being adjacent to oil development, but that
many wells in those fields are cases above the oil sand and have no
packer below it so that the gas from the lower strata *e*xcapes into the
oil producing sand and eventually into the air, and the effect and
consequence is as if oil and gas were in the same sands.

Also, that it is possible that in other places, for a very limited extent, there may be a gas sand that does not produce oil, but if the same occurs it is in the immediate neighborhood to sands that do produce oil. That the only known instance at the present time is in Section- 24 and 25 in the Osage Nation, where Messrs. Miller, Rider & Black have drilled a well to the Bartlesville sand which is in oil producing sand, but in that case the well turned out to be not an oil well but large gas well. A very short distance from this well a well was drilled through the Bartlesville sand to the Mississippi Lime strata; that the Mississippi Lime strata is generally regarded as a *strictly* gas sand and not an oil sand, yet in this instance last named, the well that passed through the Bartlesville Oil sand to the Mississippi Lime sand, turned out to be an oil well and not a gas well, and several more wells in the same locality were drilled with the same result, so that in theory the Mississippi Lime is a gas and
not an Oil sand, and in theory the sand in a portion of the
231 Copan Field and the Hogshooter Field is gas and not oil;
but in practice, actually and in truth, it is true that all of the sand in Oklahoma which produces gas at the same time produces oil, and connects or is adjacent to sands producing oil.

I am further informed and believe and upon said information state the fact to be, that while the natural gas of the State of Oklahoma is found in a gas and oil producing sand, extending underneath large contiguous areas of land and that every well reaching into said gas sand takes from this unbroken area and thereby diminishes the producing capacity of any other well and of the entire field and that if the complainant is allowed to transport gas from such fields through the new pipe lines constructed over and across the highways of the State, that it will thereby greatly damage and injure the entire field which is reached and injuriously affect and take the property of all other owners of gas in said field, and that the act of the legislature of the State of Oklahoma alleged by the bill to be unconstitutional, was an *effort* on the part of the Legislature of the State to preserve the natural gas field of the State from distributive waste.

That all cities in Oklahoma which by reason of their proximity to the gas fields should reasonably be furnished with natural gas, are
not now supplied with such gas and will never be so supplied
232 if the plaintiff is allowed to transport gas from Oklahoma
without regulation by laws of Oklahoma; that the population of Oklahoma is now approximately 1,750,000 and its population is growing more rapidly than that of any other State in the Union, that

it has a large number of rapidly growing cities and towns and that all kinds of industry is developing with great speed in Oklahoma. That because of its generally prairie character said State is entirely without a domestic fuel except coal and natural gas and that its supply of coal is growing rapidly more costly to produce because of the peculiar nature of the Oklahoma mines—their great depth, bad floors and ceilings, bad inclines, great dryness and presence of noxious and dangerous gases; that the petroleum oil produced in the State is practically all of it transported outside the State before being refined, and that substantially the only natural practical usable fuel both for domestic and industrial use is natural gas. That many of the most promising cities, such as Enid, El Reno, Lawton, Chickasha, McAlester, as well as many scores of smaller places capable, willing and anxious to obtain and use natural gas, are now without the same altogether. That in case the kind of pipe lines proposed by plaintiff is constructed no further development of the natural gas business in the State so far as the supply of cities not now obtaining the same, will in reason be accomplished, and because of the
233 relative smallness of the present lines to Oklahoma City, Guthrie, and Shawnee compaired to plaintiff's proposed lines, will in the immediate future leave said cities without natural gas. That because plaintiff may outside the State of Oklahoma erect enormous pumping stations which they are now actually in the process of constructing they might reasonably and would inevitably render entirely useless all the present lines of Oklahoma, and take away from the towns and cities of Oklahoma the entire practical use of their sole and natural fuel, because when gas is removed by the limited, prudent and natural rock pressure the nature and formation of the gas and oil sand is not radically changed, but if large pumps to pump out the wells out of proportion to the rock pressure are used, as are now actually threatened by the plaintiff the gas and oil sand is actually broken down as though shot with dynamite or other violence, and the salt water thereunder, always to be found, at once drowns out the wells, where rock pressure has been too greatly or rapidly decreased. That the use of the highways is a portion of the public property and the same should be confined to those who supply all alike who may seek to be served, that because of its nature and extent, and because the enormous amount of capital needed to make practical investments tends to create monopolies, the business of gas transportation is a public business in interstate trade, over
234 which Congress has never legislated, and interstate trade, and that to permit plaintiff to carry out its said attempt and intent to monopolize the natural gas of the State and transport it away without regulation by the State laws over and across the State's highways, without the State's consent would be to devote public property to private and exclusive use against the principles of the Constitution of this State and the United States, and deprive the intending purchasers of natural gas in this State from all supply whatsoever.

The developed gas belt of the State lies principally within Osage, Washington, Nowata and Rogers Counties.

The City of Bartlesville and the towns of the northern portion of the State, adjacent to the gas belt are now supplied from the gas found in the northern part of said gas area, but the lines gathering the same are continually being extended southerly; that the City of Tulsa and adjacent cities are supplied from the central portion of said field, and that *is* gathering lines are likewise continually from time to time being extended both north and south.

That the Cities of Muskogee, Oklahoma City, Guthrie, Shawnee, and other towns situated in the center of the State of Oklahoma and situated south, southeast and southwest of said gas fields, are being supplied from the southern portion of said fields, but the lines supplying the same are continually and from time to time
235 extended northerly.

Respondent further avers that there are several other pipe lines companies seeking to carry on business in the State in the same manner as desired by complainant and if it is determined that the right exists in the complainant such *determined* will likewise apply to all other foreign corporations seeking to engage in a like business and that the complainant and such other foreign corporations as extend their lines into the State will commence taking gas in the northern and northeastern part of said field, and as they exhaust the wells in their immediate vicinity will extend their lines in a southerly and southwesterly direction, while the pipe lines now supplying the cities and towns of the State, as they exhaust the wells closest to them will extend their lines as above described so that at once or in a very short time, the lines of the complainant and the other foreign corporations, and lines now existing in the State will meet in the center of the field, and result in the speedy destruction of the supply of gas in the State, and the lines now supplying the cities and towns of the State, by reason of these facts, will extend their lines further and will have the value of their present property destroyed.

Sixth. I admit the allegations in paragraph numbered Sixth of the Bill of Complain*ant*.

236 Seventh. I deny the allegations set forth in paragraph numbered Seventh of the Bill of Complain*ant*.

Eighth. I admit the truth of the allegations set forth in the Eighth paragraph of the Bill.

Ninth. I admit the truth of the allegations set forth in the Nonth paragraph of the Bill.

Tenth. I admit the truth of the allegations set forth in the Tenth paragraph of the Bill.

Eleventh. As to the eleventh paragraph of the Bill, this defendant avers that he is not informed that the purposes and intents of the Plaintiff are other than those alleged by it; but admits that the plaintiff is not endeavoring to supply the demand for natural gas in the State of Oklahoma.

Twelfth. I admit the truth of the allegations set forth in the Twelfth paragraph of the Bill.

Thirteenth. This defendant admits that the transportation of natural gas by means of pipe lines has been and is now extensively

carried on in the States named in the Thirteenth paragraph of the Bill, but he is not informed as to the number of mileage of said pipe lines. He admits that the same has grown into a great industry and admits that millions of dollars are invested therein; and he admits that the transportation by pipe lines is the only method of transportation now usually availed of, but this fact is due to the cheapness of transportation by such means as compared to any other kind of transportation and the competition is thus
237 restricted at this time to transportation of natural gas by pipe lines in that transportation by any other means at the present rate of transportation would not in most instances place the commodity in the market at a price sufficiently low to mean competition with coal, oil and other fuel products, and that the restriction to pipe line is therefore caused by the cheap price at which oil and coal *is* now upon the market, as well as the cheapness with which natural gas may be transported from other place to any market, and this respondent respectfully avers that the highways of Oklahoma are open to the transportation of natural gas by any means or method which does not make a permanent appropriation of any part of the highways by placing a plant in the same and that nothing in the laws of Oklahoma, nor the acts of this respondent nor purposed by him in any way interferes or hinders the transportation of natural gas by any proper highway use without placing a plant in the same.

Fourteenth. This defendant admits that there is now laid, maintained and operated in the State of Oklahoma, natural gas pipe lines, the extended mileage of which is unknown to the respondent, but they are in daily use for the transportation of gas with- the State. He admits that said lines in very many instances and often at great length, run over, along and across the public highways of the State; that the same are operated without hurt, hindrance, dam-
238 age or inconvenience to the traveling public or to abutting property owners, but he denies that they were laid with the knowledge and consent of the defendant and avers that they were laid and operated according to the laws in force at the time and pursuant to the laws of the state of Oklahoma, and that to the knowledge of defendant, there is one line daily operated for the transportation of natural gas from the State of Oklahoma into the State of Kansas, to-wit: the line owner by Charles Owne transporting gas from a portion of Washington County to the State of Kansas, and this respondent avers that the same was laid before the 16th day of November, 1907; and after this respondent became Attorney General of the State of Oklahoma on the 16th day of November, 1907, that he endeavored by proper suit and action to require the said pipe line to be maintained and operated in accordance with the laws of Oklahoma, and that by a proper compromise and agreement entered in said causes, any further laying, operating or maintenance of said line in the state of Oklahoma was discontinued except that the then existing business of said line was agreed and allowed to be continued as it then sought, because of the claim made by the said Charles Owen in said action; that the said line was right-

fully laid and operated under authority received before the 16th day of November, 1907, from the government of the United States in what was then the Indian Territory, and that said agree-
239 ment was entered in said cause because of the fact that it was then a moot question undecided by the courts whether a gas pipe line laid before Statehood, under authority from the Secretary of the Interior might thereafter be operative in the State of Oklahoma, and this respondent denies that he has ever consented to the violation of any of the laws of the State of Oklahoma, with reference to gas pipe lines.

I admit that a branch from the line running to Oklahoma City was constructed to Shawnee, and a like branch from said line to Guthrie since November 16th, 1907, but aver that they were so constructed pursuant to the laws then in force in the State, so far as I am informed.

Fifteenth. This respondent avers that he has no information as to the purposes of the plaintiff in the construction of its line except that it proposes to lay its pipe line to a depth of three feet or more under the surface of any highway it may cross.

Sixteenth. This respondent admits that by virtue of his office under the constitution and laws of the State of Oklahoma, he is clothed with power and authority, and charged with the duty of executing and enforcing the laws of the State in the protection of public rights, and particularly in respect to the execution and enforcement of the provisions of Chapter 67 of the Session
240 Laws of the State enacted in 1907 and 1908, and other acts amendatory and supplementary thereto, in so far as the same must or shall be done by litigation in which the State is interested, but as to his duties, that they rest solely upon himself and are not upon him in connection with or controlled by any other officer whatsoever, but he denies that as such officer or otherwise, he has assumed or undertaken to execute or enforce said act by force of arms or otherwise, except as herein stated; and further this defendant denies that it is his purpose and intent, either avowed or otherwise, to prevent the transportation of natural gas in Oklahoma beyond the limits of the State; but he avers that he intends acting under his duty as Attorney General to prevent solely by actions in competent courts, the laying or constructing or operation of gas pipe lines, in, on, under, across or along the highways of the State by the complainant or any other person not authorized so to do by the laws of Oklahoma; and this defendant denies the allegations set forth in paragraphs *a*, *b*, *c* and *e* of the Sixteenth paragraph of the Bill, and as to the paragraph *d* therein contained, he admits that he as such officer caused a pipe line owned and operated by one Charles Owen to be put into the hands of a receiver and admits that the same was done through an action commenced in the courts of Washington County, Oklahoma, by the filing of a petition, and
241 the Exhibit "F" is a true copy thereof. He admits that the stipulation was entered into as shown by Exhibit "B" and that a judgment and order was entered as therein shown, but he denies that said pipe line was created and used wholly for the trans-

portation and carriage of natural gas from Oklahoma to Kansas and avers that said pipe line was being used for the transportation of natural gas *from Oklahoma to Kansas and avers that said pipe line was being used for the transportation of natural gas* both from Oklahoma to Kansas and between different points in the State of Oklahoma and he denies that the petition was wickedly, cunningly and fraudulently drawn to conceal the fact that said line was engaged in interstate commerce and he alleges that said petition was candidly and honestly framed under the Statutes of the State of Oklahoma dealing with nuisances and their abatement.

He admits that he opposed the removal of said cause from the said court and avers upon argument that the state court refused to remove the cause.

He admits that in the federal court he moved to remand the same to the State court and avers that the federal court properly and rightfully remanded the same.

He denies that there were any vexatious delays and denies that he used any improper means to compel the decision given in said cause, and admits that defendants did consent to a decree entered in said cause on the 18th day of April, 1908, but by the terms of said decree the defendants were allowed to continue to prosecute all the rights at that time in existence in their possession, upon consent that they should not extend, expand or increase the same,
242 and that the effect of said decision was to hold the business therein in statu quo and to hold the rights of the state in the same; that said consent was gained honestly, openly and without any fraud, for the best interests of all the parties in the action.

That this defendant denies any other matter stated in said paragraph of paragraph sixteenth of said bill, except as above stated.

Seventeenth. This defendant denies each and every statement made in the Seventeenth paragraph of said Bill; but he intends to act as averred in the Sixteenth paragraph of this answer.

Eighteenth. This defendant denies any knowledge of the matters set out in the Eighteenth paragraph of the bill.

Nineteenth. This defendant denies each and every statement contained in the Nineteenth paragraph of the bill, except as to the amount in controversy, which he admits.

Twentieth. This defendant says that in that portion of the state where natural gas is produced, that a large number of persons formerly members of Indian tribes hold allotments in severalty and that in many instances such premises are at this time inalienable and that the Secretary of the Interior occupies towards them the office of guardian, but that rapidly the condition of said lands *are* becoming alienable and the guardianship of the Secretary of the Interior is being more and more restricted and his duties decreasing and that at this time there is a larger proportion of lands that
243 are alienable that belong to other citizens of the United States than inalienable and belonging to members of Indian Tribes who can not dispose of the same.

Twenty-first. This defendant admits the statements made in the twenty-first paragraph of the bill.

Wherefore, this defendant submits that he has a right to and a duty to bring such actions as the valid laws of the State require; that he has neither done or intended any trespass or injury upon the plaintiff and that the injunction awarded against him by this Honorable Court ought to be dissolved and the Bill ought to be dismissed with costs.

CHARLES WEST, *Pro Se.*

Endorsed: No. 858. A. W. Lewis vs. Charles N. Haskell, et al. Separate amended answer of Charles West. United States Circuit Court, Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, clerk.

244 And thereafter on the 1st day of February, 1911, the Complainant, filed Motion for Decree and Perpetual Injunction. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNETT MINING COMPANY, Plaintiff,
vs.
SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
SAME, Defendants.

Motion for Decree and Perpetual Injunction.

Now comes the plaintiffs in the above entitled consolidated causes and move the court to set the same down for hearing on complainants' bills and the separate amended answers of the defendant Charles West, and the stipulation of the parties herein filed, and upon consideration of the said bills and answers and stipulation to grant plain-

tiffs the relief prayed for in their said bills of complaint, and
245 to enter herein a finding and decree in favor of complainants, and that the temporary injunction heretofore ordered and entered herein be made permanent and perpetual, and that the bonds of plaintiffs heretofore filed herein upon the temporary injunctions be cancelled and the bondsmen therein released from any further obligation or liability by reason thereof.

EUGENE MACKEY.
JOHN J. JONES.
E. W. HATCH.
J. P. O'MEARA.
Attorneys for Plaintiffs.

Endorsed: #856. In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Company, Plaintiff vs. Charles N. Haskell, et al., Defendants. Marnett Mining Co., Plaintiff vs. Same, Defendants. A. W. Lewis, Plaintiff vs. Same, Defendants. Motion for decree and perpetual injunction. United States Circuit Court Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

246 And thereafter on the 1st day of Feb. A. D. 1911 the same being one of the days of the regular Muskogee, 1911 term of the United States Circuit Court for the Eastern District of Oklahoma, court met pursuant to adjournment. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had were the following:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiff,
vs.
SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
SAME, Defendants.

Order for Consolidation.

By consent of all the parties thereto it is hereby ordered that the above entitled causes be consolidated for trial, and that the same be

set down for immediate hearing upon the pleadings and stipulation therein.

RALPH E. CAMPBELL, *Judge.*

247 And thereafter on the same day this cause was heard on the pleadings and the following decree entered:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL et al., Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiff,
vs.
SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
SAME, Defendants.

Final Decree.

The three cases pending herein, of Kansas Natural Gas Company, plaintiff, vs. Charles N. Haskell, et al., defendants No. 856; The Marnet Mining Company, plaintiff, vs. Charles N. Haskell, e al., defendants, No. 857; and A. W. Lewis, Plaintiff vs. Charle N. Haskell, et al., defendants No. 858, having been heretofore by stipulation of parties and order of court, consolidated, and the same and each of them, now coming on regularly for hearing and final decision and decree on the bills of complaint and the separate amended answers of defendant Charles West, and the stipulation of the parties hereto, and the motion of plaintiffs therefor, and all the parties appearing by their respective attorneys and the causes
248 being submitted to the court on said pleadings and stipulation, and the court having duly considered the same and being fully advised in the premises doth find, order, adjudge and decree as follows:

1. Defendants J. E. Love, J. J. McAlester, Pete Hanraty, J. P. Watson and John J. Shea, have filed herein disclaimers of any intent or purpose to do or perform any of the acts or undertake any

of the proceedings as charged against them and each of them in plaintiff's bills of complaint filed herein, and for that reason said bills of complaint, as to said defendants in this paragraph named are dismissed.

2. That the said motion of the plaintiff herein for a permanent and perpetual injunction against the several defendants herein is by the court sustained and granted.

3. The court doth find the issues and equities herein in favor of the plaintiff, and that the plaintiff is entitled to the relief prayed for in the bill of complaint herein; and doth find, adjudge and decree that chapter 67 of the Session Laws of the State of Oklahoma of 1907-8 passed and enacted by the Legislature of said State of Oklahoma, and approved by the Governor of said State on the 21st day of December, 1907, and referred to in plaintiff's bill of
249 complaint herein, is unreasonable, unconstitutional, invalid and void and of no force or effect whatever.

4. The temporary injunction heretofore ordered and entered herein is hereby made permanent and perpetual, and the defendants and each and every of them, their representatives, agents, servants, attorneys, workmen, and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them, or either of them, are hereby forever restrained and enjoined from committing any of the acts complained of by complainant in its, or his, bill of complaint, and from tearing up or destroying, or in any way interfering with the laying, building, and construction of complainants' pipe lines, or any of the pipe lines referred to in the prayer of complainant's bill of complaint, in through or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of Chapter 67 of the Session Laws of 1907-1908 passed and enacted by the Legislature of the State of Oklahoma, or by reason of any other claimed authority or statute of said state, or common law right, rule of action or unwritten law whatsoever; and from in any manner instituting, prosecuting, or conducting any suits, or suing out any writs of process in any of the state courts of the State of Oklahoma against the complainants, or any one representing it, or him, for the purpose of enjoining, restraining or interfering with either of them in the laying, building,
250 construction, maintenance or operation of any gas pipe line either under the authority of said Legislative act contained in said Chapter 67 of the Session Laws of Oklahoma 1907-8 above referred to, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma.

5. The bonds heretofore filed herein by the plaintiffs upon the issuance of the temporary injunctions are hereby cancelled and annulled and the obligors and sureties theerin aer hereby discharges from any further liability or responsibility growing out of, or by reason, of the terms, stipulations and conditions of said bonds.

6. The taxable cost of the case shall be paid by the remaining de-

fendants and the plaintiff and officers of this court may have proper process for the collection of the same.

To all of which orders, Judgments, and decrees, defendants at the time duly excepted, which exceptions are allowed.

Done and ordered of record in each of the above entitled and mentioned causes, in open court, this 1st day of February, 1911, at Muskogee, Oklahoma.

RALPH E. CAMPBELL, *Judge*.

251 And thereafter on the same day the defendant filed Application for appeal, which was allowed by the Court, and assignment of error.

Application for appeal, assignment of error and order allowing appeal are in words and figures as follows:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,

vs.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein: J. E. Love, J. J. McAlester and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiffs,

vs.

THE SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,

vs.

THE SAME, Defendants.

Application for Appeal.

252 The above named defendant, Charles West, Attorney General of the State of Oklahoma, conceiving himself aggrieved

by the final decree made and entered by the above named Court, in this cause, under date of February 1st, 1911, by which final decree, the temporary injunction heretofore ordered and entered in said cause, was made permanent and perpetual, by which decree, the defendants in said cause were forever restrained and enjoined from committing any of the acts complained of by complainants in their several bills of complaint, and from tearing up or destroying, or in any way interfering with the laying, building and construction of plaintiff's pipe line, in, through, or out of the State of Oklahoma, by reason of any of the terms or provisions or contents of Chapter 67 of the Session Laws of 1907-1908 passed and enacted by the Legislature of the State of Oklahoma, or by reason of any other claimed authority or statute of said state, or common law right, rule of action or unwritten law whatsoever; and from in any manner, prosecuting or conducting any suits, or suing out any writs of process in any of the State courts of the State of Oklahoma against said plaintiffs, or any one representing them, for the purpose of enjoining, restraining or interfering with them in the laying, building, construction, maintenance or operation of any gas pipe
253 line, either under the authority of said legislative act contained in said Chapter 67 of the Session Laws of Oklahoma of 1907-1908, above referred to, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action or unwritten law of the State of Oklahoma, do hereby appeal to the Supreme Court of the United States, for the reasons set out in the assignment of errors, which is filed herewith; and he prays that this petition for said appeal may be allowed and that a transcript of the record, proceedings, and papers upon which decree is made duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 1st day of February, 1911.

CHARLES WEST,
Attorney General of the State of Oklahoma, Defendant.
By W. C. REEVES, *His Solicitor.*

Notice and citation on appeal, to show cause why application should not be granted, is hereby waived this 1st day of February, 1911.

EUGENE MACKEY.
JOHN J. JONES,
E. W. HATCH.
E. L. SCARRITT.
Solicitors for Plaintiffs.

254 Appeal allowed and cost bond fixed at five hundred Dollars this 1st day of February, A. D. 1911; but it is ordered that appeal & bond shall not act as supersedeas upon the decree herein in any event.

RALPH E. CAMPBELL.
District Judge, Sitting as Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

Endorsed: No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. No. 856. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell, et al., Defendants No. 857. The Marnet Mining Company, Plaintiff, vs. The Same, Defendants. No. 858. A. W. Lewis, Plaintiff vs. The Same, Defendants. Application for Appeal. United States Circuit Court, Eastern District Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

255 In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,

vs.

CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the State of Oklahoma and a Resident of the County of Garfield Therein, and John J. Shea, John H. Kane, and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, J. J. McAlester, and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg, and Pottawatomie therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg, Therein, Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiff,

vs.

THE SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,

vs.

THE SAME, Defendants.

Assignment of Errors.

256 The defendant, Charles West, Attorney General of the State of Oklahoma, prays an appeal from the final decree of this Court to the Supreme Court of the United States and assigns for error:

First. That the Court erred in making permanent and perpetual the temporary injunction heretofore ordered and entered herein, and restraining and enjoining this defendant, his representatives, agents, servants, attorneys, workmen and employees, and all other persons whomsoever, advised, inspired, influenced, incited or prompted by them or either of them, from committing any of the

acts complained of by complainants in their bills of complaint, and from tearing up or destroying, or in any way interfering with the laying, building and construction of complainant's pipe line, in, through, or out of the State of Oklahoma, by reason of any of the terms or provisions of Chapter 67 of the Session Laws of 1907-1908, of the State of Oklahoma, or by reason of other claimed authority or statute of said state, or common law rights, rule of action or unwritten law whatsoever; and from instituting any suits, or suing out any writs of process in any of the State courts of the State of Oklahoma, against the complainants or any one representing them,
257 for the purpose of enjoining, restraining or interfering with them, in the laying, building, construction, maintainance or operation of any gas pipe line either under the authority of said legislative act contained in said Chapter 67 of the Session Laws of Oklahoma of 1907-1908, or under any other law or statute of the State of Oklahoma, or under any common law right, rule of action, or unwritten law of the State of Oklahoma; said decree being made and entered the — day of February, A. D. 1911.

Second. That the court erred in enjoining this defendant, his representatives, agents or servants, from interfering with the laying, building and construction of plaintiff's pipe lines in, through, or out of the State of Oklahoma, by reason of the terms and provisions of Chapter 67 of the Session Laws of 1907-1908 passed and enacted by the Legislature of the State of Oklahoma.

Third. That the court erred in enjoining and restraining this defendant, his representatives, agents, or servants, from interfering with laying, building and construction of plaintiff's pipe lines in, through, or out of the State of Oklahoma by reason of any claimed right, authority or statute, of said State, other than Chapter 67 of the 1907-1908 Session Laws of Oklahoma, or by reason of any common law, right, rule of action, or unwritten law.

258 Fourth. That the court erred in enjoining and restraining this defendant, his representatives, agents or servants from in any manner prosecuting or conducting any suits, or suing out any writs of process in any of the State courts of the State of Oklahoma, against said complainants, or any one representing them, for the purpose of enjoining, restraining or interfering with them in the laying, building, construction or operation of any gas pipe line either under the authority of the legislative act contained in Chapter 67 of the Session Laws of Oklahoma of 1907-1908, or under any other law or statute of the State of Oklahoma or under any common law, right, rule of action, or unwritten law of the State of Oklahoma.

In order that the foregoing assignments of error may appear of record the said defendant presents the same to the court and pray that such disposition be made as in accordance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

CHARLES WEST.
Attorney General of the State of Oklahoma, Defendant.
By W. C. REEVES.
His Solicitor.

259 Endorsed: No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. No. 856. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell et al., Defendants. No. 857. The Marnet Mining Company, Plaintiff, vs. The Same, Defendants. No. 858. A. W. Lewis, Plaintiff, vs. The Same, Defendants. Assignment of errors. United States Circuit Court, Eastern Dist., Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

260 And thereafter on the same day the defendant filed his appeal bond, which is in words and figures as follows:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL, a Citizen of the State of Oklahoma and a Resident of the County of Muskogee Therein, and Charles West, a Citizen of the County of Garfield Therein, and John J. Shea, John H. Kane and Frank B. Burford, Citizens of the State of Oklahoma and Residents of the County of Washington Therein; J. E. Love, J. J. McAlester and A. P. Watson, Citizens of the State of Oklahoma and Residents Respectively of the Counties of Woodward, Pittsburg and Pottawatomie Therein, and Pete Hanraty, a Citizen of the State of Oklahoma and a Resident of the County of Pittsburg Therein, Defendants.

No. 857.

THE MARNET MINING COMPANY, Plaintiffs,
vs.
THE SAME, Defendants.

No. 858.

A. W. LEWIS, Plaintiff,
vs.
THE SAME, Defendants.

Bond.

261 Know all men by these presents, That Charles West, Attorney General of the State of Oklahoma, as principal, and A. C. Trumbo as surety are held and firmly bound unto the Kansas Natural Gas Company, The Marnet Mining Company, and A. W. Lewis, in the sum of Five Hundred Dollars, to be paid to them and

for the payment of which well and truly to be made they and each of them are bound by these presents.

Sealed with our seals and dated this 1st day of February, A. D. 1911.

Whereas, the above named Charles West, Attorney General of the State of Oklahoma, appellant, seeking to prosecute his appeal to the Supreme Court of the United States, to reverse a final decree rendered and entered in the Circuit Court of the United Stats, for the Eastern District of Oklahoma, wherein appellant was defendant and the appellees herein were plaintiffs, on the 1st day of February, A. D. 1911.

Now therefore, the conditions of this obligation are such that if the above named appellant shall prosecute his appeal to effect and answer all costs that may be adjudged, if he shall fail to make good his appeal, then this obligation to be void, otherwise to remain in full force and virtue.

CHARLES WEST.
A. C. TRUMBO.

262 This bond approved this 1st day of February, A. D. 1911.

RALPH E. CAMPBELL.
Judge of the District Court, Acting as Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

Endorsed: No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Company, Plaintiff, vs. Charles N. Haskell, et al., Defendants. No. 857. The Marnet Mining Company, Plaintiff, vs. The Same, Defendants. No. 858. A. W. Lewis, Plaintiff, vs. The Same, Defendants. Bond. United States Circuit Court Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

263 And thereafter on the same day the parties hereto filed stipulation as — the record necessary *in* appeal. Said stipulation being in words and figures as follows:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

Consolidated No. 856.

No. 856.

KANSAS NATURAL GAS COMPANY, Plaintiff,
vs.
CHARLES N. HASKELL, Defendants.

No. 857.

THE MARNETT MINING CO., Plaintiff.
vs.
SAME Defendants.

No. 858.

A. W. LEWIS, Plaintiff.
vs.
SAME Defendants.

Stipulation.

It is stipulated that the record and appeal in this case to the Supreme Court of the United States from the Circuit Court of the United States for the Eastern District of Oklahoma, shall consist of printed copies of the Bill & exhibits thereto, separate answers of Charles West to each of said bills, of the stipulation, entered — by the parties for the consolidation and method of appeal, the motion for the decree, order for consolidation & hearing, the decree and
264 such further proceedings since the date *if* the decree as may be filed and entered in the Circuit Court of the United States for the Eastern District of Oklahoma, and that all the other papers, pleadings, subpœnas, processes, demurrers, motions, orders and records may be omitted from the transcript.

EUGENE MACKEY,
JOHN J. JONES,
E. W. HATCH,
E. L. SCARRITT,
J. P. O'MEARA,
Attorneys for Plaintiff.
C. B. AMES,
W. C. REEVES,
PRESTON C. WEST, AND
CHARLES WEST,
Attorneys for Defendant.

Endorsed: No. 856. In the Circuit Court of the United States for the Eastern District of Oklahoma. Kansas Natural Gas Co., Plaintiff, vs. Charles N. Haskell, et al., Defendants; Marnett Mining Co., Plaintiff, vs. Same, Defendants; A. W. Lewis, Plaintiff, vs. Same, Defendants. Stipulation as to record. United States Circuit Court Eastern Dist. Okla. Filed Feb. 1, 1911. L. G. Disney, Clerk.

265 UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a true and correct transcript of so much of the consolidated cases of Kansas Natural Gas Company vs. Charles N. Haskell et al.; The Marnet Mining Company vs. Charles N. Haskell et al.; A. W. Lewis vs. Charles N. Haskell, et al., appearing on file and of record in my office at Muskogee, as was ordered to be prepared and authenticated and in accordance with stipulation as to record and appeal in this case to the Supreme Court of the United —.

In testimony whereof, witness my hand and official seal of this Court, at Muskogee, Oklahoma, this 14th day of February, A. D. 1911.

[Seal of the United States Circuit Court, Eastern District of Oklahoma.]

L. G. DISNEY, *Clerk.*
By H. E. BOUDINOT, *Deputy.*

266 *Stipulation.*

1. The "Fourteenth" paragraph of the answer in the case of The Marnet Mining Company v. Charles N. Haskell, et al., refers to the "Twelfth" paragraph of the bill in said case.

2. The "Fifteenth" paragraph of the answer in said case refers to the "Thirteenth" paragraph of the bill in said case.

3. The "Sixteenth" paragraph of the answer in said case refers to the "Fourteenth" paragraph of the bill in said case.

4. The "Seventeenth" paragraph of the answer in said case refers to the "Fifteenth" paragraph of the bill in said case.

5. The "Eighteenth" paragraph of the answer in said case refers to the "Sixteenth" paragraph of the bill in said case.

6. The "Nineteenth" paragraph of the answer in said case refers to the "Seventeenth" paragraph of the bill in said case.

7. The "Twentieth" paragraph of the answer in said case refers to the "Eighteenth" paragraph of the bill in said case.

8. As to the "Nineteenth" paragraph of the bill in said case the answering respondent herein avers that he is not informed that the facts are other than as therein alleged, except that he denies that the maintenance and operation of the said gas pipe line has been known to or acquiesced in by him.

9. That as to the "Twelfth" paragraph in the bill in the case of A. W. Lewis v. Charles N. Haskell, et al., the respondent admits the allegations therein contained, except the allegation that there is a great overproduction of natural gas in Washington County, Oklahoma.

CHARLES WEST AND
W. C. REEVES,
For Appellants.
EUGENE MACKEY &
E. L. SCARRITT,
For Appellee.

Endorsed on cover: File No. 22,537. E. Oklahoma C. C. U. S. Term No. 916. Charles West, Attorney General of the State of Oklahoma, appellant, vs. The Kansas Natural Gas Company, The Marnet Mining Company and A. W. Lewis. Filed February 21st, 1911. File No. 22,537.

Office Supreme Court, U. S.
FILED.
FEB 24 1911
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 916.

CHARLES WEST, ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS, APPELLEES.

APPLICATION TO ADVANCE.

CHAS. WEST,
Attorney-General of Oklahoma Pro Se.

CHARLES B. AMES,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 916.

CHARLES WEST, ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS, APPELLEES.

APPLICATION TO ADVANCE.

Comes the appellant, Charles West, Attorney General of the State of Oklahoma, and prays the court to advance this appeal for argument and submission. *Otherwise the subject-matter of the controversy will be destroyed*, under the protection of the injunctional orders appealed from, and the effect of the appeal be frustrated before or by the time of its final determination.

The cause of the controversy is the attempt of the State of Oklahoma to conserve the deposits of natural gas situated within its limits by legislation (which Acts the bills seek to have declared unconstitutional and void) and, particularly as far as this appellant is concerned, by judicial proceedings threatened by this appellant to be taken under the power of the State to control the use of its highways and forbid by legislation and prevent by litigation the erection and maintenance in, over, under, or across such highways, of unlicensed plants for the transmission of gas by pipe line.

The original bills filed in the Circuit Court of the United States for the Eastern District of Oklahoma seek to enjoin the authorities of that State from enforcing the terms of an act of the State legislature which limited to domestic corporations the use of public highways either along, across, under, or upon, for the construction or operation of natural gas pipe lines; also said bills seek to enjoin the authorities of the State, including appellant, from enforcing any other statute or common law of the State which might interfere with the construction, maintenance, or operation by appellees of their pipe lines described in the bills which were intended at the time the bills were filed and do now transport natural gas from Oklahoma interstate into Kansas and other States.

The *matter is of great public importance* to the general public of the State of Oklahoma because the use of the large pipes and pumps intended by appellees at the time the bills were filed, and

now actually erected, maintained, and used by them, is rapidly, and with great waste, destroying the entire supply of natural gas in the State, threatening the destruction of the oil sands as well as the gas field, and promises in the very near future to rob the State of its sole natural fuel supply now practically in general use.

The State of Oklahoma is practically without a supply of wood adequate and suitable for fuel. Its supply of coal fuel is, because of the soft nature of the mine walls, ceilings, and floors, the great dryness of the mines, the large amount of inflammable gases therein, the incline of the coal strata, and other causes, very expensive to mine, with every promise of becoming rapidly more expensive to the point of commercial prohibition of its use. The coal output is yearly becoming less in volume. The industry of fuel oil is but in its beginning and not now of general use. *Natural gas is thus the sole adequate fuel supply.*

Because natural gas, oil, and salt water generally, if not always, occur in the Oklahoma petroleum sands, one above the other in the order named, and also because of the intercommunication beneath the surface of the earth through the porous rock of the various petroleum strata, as well as communication through the oil and gas wells in operation, the rapid taking away of gas by enormous suction pumps, such as appellees threaten to install, and now actually are using immediately north of the State line in Kansas, will break down the rock structure, destroy the rock

pressure, cut off the supply from the wells of other persons drilled and in use previous to the construction of appellees' pipe lines, and threaten the flooding with salt water from below of both the gas and oil wells of the entire vicinity.

This injury alleged as threatened by the answer is, since the erection of appellees' pumps and lines, becoming an actual fact. The gas fields of the State are becoming rapidly depleted, the supply being inadequate to the consumption even before the bills were filed. During this winter, though extraordinarily warm, the supply of natural gas in the lines already in operation before these injunctions were allowed is growing rapidly less and the rock pressure constantly passing off rapidly.

Of the gas wells drilled in Oklahoma, already three-quarters and more are now dry and exhausted. The experience of Kansas, Indiana, and Ohio justifies the appellant in believing that if the appeal is not immediately heard the gas supply in Oklahoma may be exhausted before the appeal can be heard if taken in regular order. *These matters are set out in substance in the answer.*

The legal questions involved are these:

The appellees justify their acts as interstate commerce.

The position of the State is that the Acts attacked are to prevent distributive waste.

The State can prohibit the use of pumps. They inordinately waste (Ohio Oil Co. *vs.* Indiana, 177 U. S., 190).

The State's power of conservation is that of police. The police power may use the device of creating a franchise and limiting to corporations (Noble State Bk. *vs.* Haskell, this term).

The erection of an enormous pump north of the State line (as appellees' at Caney, Kas.,) may render nugatory the State's police power if transmission by pipe line cannot be confined to the State's corporations and within the State.

In no event should the legal officer of the State be enjoined from acting under the common law to prevent a trespass upon the State highways.

In so far as the legislation and litigation of the State injure appellees they do so negatively, by a failure to grant them franchises, not affirmatively. If neither the State nor the United States grant the necessary franchise, appellees suffer neither *damnum* nor *injuria* (Western Union *vs.* Penn., 195 U. S., 594).

Temporary orders without stay were granted previous to August 18, 1910. These were made permanent without stay in January, 1911, and an immediate appeal taken here. If they were erroneous orders, the injury they are working is irreparable.

Respectfully submitted,

CHAS. WEST,
Attorney-General of Oklahoma Pro Se.

CHARLES B. AMES,
Of Counsel.

Office Supreme Court, U. S.
FILED.
FEB 27 1911
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 916.

CHARLES WEST, ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS, APPELLEES.

OPPOSITION TO APPLICATION TO ADVANCE.

E. L. SCARRETT,
JOHN J. JONES,
EUGENE MACKEY,
Attorneys for Appellees.

(22,537.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 916.

CHARLES WEST, ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

THE KANSAS NATURAL GAS COMPANY, THE MARNET MINING COMPANY, AND A. W. LEWIS, APPELLEES.

OPPOSITION TO APPLICATION TO ADVANCE.

The appellees object to the advancement of this case upon the calendar.

The only reason assigned for its advancement is that otherwise the supply of natural gas in Oklahoma, the subject-matter of the controversy, will be exhausted. If this reason has any substantial basis upon which it can be safely grounded, it must be because the State of Oklahoma has some proprietary interest in the gas which it wrongfully attempts to confine within its borders. But the State has no such proprietary interest. It does not

own one foot of the gas which The Kansas Natural Gas Company and The Marnet Mining Company, two of the appellees, are piping out of Oklahoma. These two appellees own and operate natural gas lines running from Washington County, Oklahoma, northwardly into Kansas and Missouri, through which the great cities of St. Joe and Kansas City, Missouri, and Topeka, Kansas City, Atchison, and Leavenworth, Kansas, as well as the other cities of western Missouri and eastern Kansas, are daily supplied with natural gas for light, heat, and fuel. If it be true that the State of Oklahoma is interested in an early decision of this case, the States of Kansas and Missouri are just as strongly and with equal right interested in a late one, for they need natural gas for light, heat, and fuel much more than does the State of Oklahoma.

Every foot of the gas which the Kansas and Marnet companies daily pipe out of Oklahoma is mined by owners of gas lands in that State, brought by them to the surface of the earth, and there sold and delivered by them into the pipe lines of the two said companies. Not one foot of this gas is owned by the State of Oklahoma. On the contrary, it is the private property of the owners of the mines or wells from which it flows. Natural gas and petroleum oil are minerals differing in no way from coal, lead, zinc, iron ore, and the like, and are the subjects of private ownership as much as wheat, corn, or potatoes, and consequently the owners thereof enjoy the same right to transport

them to any market they please. (Brown *vs.* Spilman, 155 U. S., 665; Ohio Oil Co. *vs.* Indiana, 177 U. S., 190; Snyder on Mines, pp. 954-958, §1170; Thornton on Oil and Gas, pp. 18-20; White on Mines and Mining Remedies, p. 223, §162; Hall *vs.* Reed, 15 B. Mon. (Ky.), 479; Funk *vs.* Haldeman, 53 Pa., 248; Stoughton's Appeal, 88 Pa., 198; Bleakley *vs.* Marshall, 174 Pa., 429; Gill *vs.* Weston, 110 Pa., 317; Gas Co. *vs.* De Witt, 130 Pa., 249; Chartiers Coal Co. *vs.* Mellon, 152 Pa., 297; Hague *vs.* Wheeler, 157 Pa., 341; Murray *vs.* Alfred, 100 Tenn., 100; Moore *vs.* Griffin, 72 Kan., 164; Isom *vs.* Rex Crude Oil Co., 147 Cal., 659; Ontario Natural Gas Co. *vs.* Gossfield, 18 Ont. App., 666; Hughes *vs.* Pipe Lines, 119 N. Y., 423; Williamson *vs.* Jones, 39 W. Va., 256; South Penn Oil Co. *vs.* McIntire, 44 W. Va., 305; Carter *vs.* Tyler County Court, 45 W. Va., 806; Williamson *vs.* Jones, 43 W. Va., 562; Wilson *vs.* Youst, 43 W. Va., 834; Preston *vs.* White, 57 W. Va., 278; Kelley *vs.* Ohio Coal Co., 57 Ohio St., 328; Gas Co. *vs.* Ullery, 68 Ohio St., 271; Honemaker *vs.* Amos, 73 Ohio St., 170; State *ex rel.* Corwin *vs.* Indiana Oil, Gas & Min. Co., 120 Ind., 575.)

We cite such a large number of cases only to show the universality of the rule.

Until the lines of the two appellees, the Kansas and Marnet companies, were laid into Oklahoma, these owners of natural gas wells or mines, owing to a dearth of consumers in that State, had no market for the gas which they mined, and their

wells lay capped and shut in and the product thereof of no value to them. It is the purpose of the State of Oklahoma to prevent these private owners of private property from transporting the output of their gas wells or mines to Kansas and Missouri and supplying the large demand and need there existing for natural gas for light, heat, and fuel. In furtherance of that purpose the State officials have violently torn up and destroyed gas lines in process of construction from Oklahoma into Kansas; have patrolled the State line between those States with armed guards, ordered and directed to prevent with force and violence the construction of any pipe line across it; have instituted legal proceedings in the State courts against parties about to lay interstate lines and thrown such lines into the hands of receivers.

The Kansas and Marnet companies, about to lay interstate gas lines from Kansas into Oklahoma, and fearful of like violence, filed bills to enjoin the State officials from interfering in any way with the constructions and operations of their lines.

A. W. Lewis, the third appellee, is the owner of gas lands in Washington County, Oklahoma, upon which he drilled wells and mined natural gas, which he desired to market, but was unable to do so, there being no sufficient market or consumption thereof in Oklahoma, unless he could get the same into Kansas and Missouri, where there existed a very ready and active market for natural gas. He

therefore filed his bill to restrain the State officials from interfering with the laying and construction of interstate pipe lines.

The three suits were finally combined.

Preliminary injunctions were entered in the three suits in September, 1909, under which interstate gas lines from Oklahoma into Kansas and Missouri were immediately laid and have ever since been in full and active operation. No great public urgency seems to have sped the case below, for the record discloses that it was not until February 1, 1911, that amended answers were filed and issues joined.

We submit that this is not a case of such public urgency that it should be advanced on the calendar. It is a case involving wholly the right of private owners of private property in the State of Oklahoma to transport the same to any point in the United States where they can secure a satisfactory market.

If, however, this court does advance the same, we respectfully ask that it be not set for argument until October next, so that we may have ample time to properly prepare it for argument and submission.

All of which is respectfully submitted.

E. L. SCARRETT,
JOHN J. JONES,
EUGENE MACKEY,
Attorneys for Appellees.